THE HOUSE OF LORDS

BY

J. WYLIE

HISTORICAL SKETCHES

PUBLISHERS' NOTE

No current social or political question can be rightly understood without an accurate knowledge of the main outline of its history. An unbiased statement of that history can as a rule be found only in expensive works whose very length forbids their study by the busy man of affairs. It is the object of this series to place within easy reach these historic facts which must form the basis of all sound opinion.

HISTORICAL SKETCHES

NUMBER ONE

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J. WYLIE

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PREFACE

I HAVE not attempted in this short sketch on a large subject to go in any detail into any problems which may be found fully discussed in the standard authorities on constitutional law. To those authorities, in the list of whom I refer with special gratitude to the names of Taswell-Langmead, Pike, Hallam, May, and above all, Anson and Stubbs, I am bound to express my obligations: how extensive those obligations are will be obvious at once to any student of the subject. But at a time when the House of Lords is, and seems likely to continue, the centre of a heated controversy, those who are not students and have not the inclination to pick out the outlines of its history from the mass of learning which surrounds Crown, Lords, and Commons, may perhaps find it useful to have that history told shortly in a consecutive form, in its relation to the more widely known events of the general history of the country. To isolate the House of Lords entirely from the Crown and Commons and examine it by itself is not, of course, a possible proceeding, nor, if possible, would it be logical. The

nineteenth century I have treated very shortly; the position of the Lords since 1832 is matter for debate. I have not tried to conceal the side which I should take in that debate; but to go into it fully would involve an inquiry into the merits of each subject in dispute between the two Houses, an inquiry which is not within the scope of this work. My object has merely been to give a rough idea of the growth and development of the Lords and their relation to the Crown and Commons before the great debate began, for the benefit of those who are anxious to go shortly into the historical side of the question before (or after) deciding whether the House of Lords is an effete and antiquated relic of the past, or the pride and glory of our Constitution.

J. W.

4 Elm Court, Temple
January 1908

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CHAPTER I

THE HOUSE OF LORDS FROM THE CONQUEST TO THE GREAT CHARTER

THERE is a point in English history at which the historian can fairly say, "Here the House of Commons began"; but the House of Lords was always with us from the first moment when England could be described as a united nation. However complete, however autocratic, the power of the reigning king might be, there was always a body of those who had attained to eminence in religion, war, or wisdom, prepared to assert, and often asserting with effect, a right to take an important part in the government of the country. The Witan of the Saxon era had maintained in practice the theory of the elective character of the crown; a theory to which William paid lip-service when, having crushed Harold and cowed London, he graciously allowed them by their archbishop to forget that they had elected the youthful Edgar the Atheling, and to bestow the kingdom upon himself. Then came the period of fire and sword which devastated the northern parts of the country, ended with the ferreting out of Hereward the

Wake, and showed that something very different from election was the foundation of the Conqueror's title to be the King of the English; and wholesale confiscations of lands left the way clear for the imposition of Continental feudalism (modified in one most important particular for English use) upon the disorganised remnants of the Saxon state.

Whether or not the feudal system had obtained a footing in this country before William arrived is an interesting question which it is not here necessary to discuss. Great thanes who had deserved well of their king, or religious houses from whose intercession he had hopes for the hereafter, had been presented with lands; but the present seems to have been often rather a gift of the revenues than anything involving a change in the actual ownership; and smaller landholders are found taking oaths of fealty to their more powerful neighbours for their own protection. But the Saxon organisation of nobles or eorls, freemen or ceorls and slaves, was a simple thing by the side of the complicated system which took its place; and its chief importance from the constitutional point of view is that in its local courts it contained the germs of popular representation which afterwards developed into representation in the central parliament of the nation.

In his native land William the Conqueror had been one great lord among many, and the many had not easily acquiesced in his rule. Such of them as came across with him came, in their own estimation, as co-

adventurers rather than as subjects; and each of them probably expected to perpetuate in a new land the system which left them little kings in their own right over their own particular territories and dependents, and bound to their superior lord with a strictness which depended only on the physical or moral force which he could bring to bear upon them. The feudal system as known on the Continent was a military organisation resting upon the tenure of land. The supreme lord or king was in theory the absolute owner of all the land in his kingdom, as is the king of this country in theory to the present day. Under him were his immediate tenants, the great lords of the country, who held their lands from him under what Hallam describes as "a mutual contract of support and fidelity." They in their turn granted out by subinfeudation fiefs to tenants of their own, who followed their example, each man in the chain holding land of his superior lord on terms similar to those on which such superior lord held his own. It is not, of course, to be laid down without qualification that this system was the rule in every case; at different times and at different places variations are to be found, and in particular there survived from an earlier and more primitive period a system of tenure, known as "allodial," which was not feudal at all, and seems to have merged in the feudal system as each "allodial" tenant found himself helpless against the lawless violence of his neighbours, and was compelled to bind himself to a feudal lord for his own

protection. But the system of lords upon lords which has been briefly sketched was the one which ultimately prevailed over the greater part of Western Europe, and this it was which William and his victorious knights brought over with them at the Conquest.

The grant of land with its attendant ceremonies was a very formal and dignified performance. In general the vassal knelt before his lord bare-headed, and, placing his hands in his, promised, with vows of homage and fealty, to be his man; and in return for the land which he received certain services had to be performed. Incident to military tenure was the duty of serving for a certain number of days in the field, or in certain cases finding substitutes, and this provided the lord with an army; and in default of service money might be, and was frequently, paid. Apart from this there were heavy pecuniary burdens upon the holding, which must be referred to if such references as will be made to taxation are to be understood. There were reliefs, or payments exacted on the death of a vassal from his incoming heir, which are explained by some as a survival of the times when fiefs had not become hereditary, and by others as simply originating from the lord's natural tendency to seize all he could lay his hands upon before the heir was firmly settled in his patrimony. Uncertain in their amount, though very certain in their incidence, these primitive death-duties were often the occasion of gross oppression. Similar to reliefs were fines to be paid as a condition of the lord's consent to the aliena-

tion of lands. Frequently, too, there was no heir, either from natural causes or by reason of forfeiture, and here the whole estate escheated to the lord; and if the heir was a minor, the lord took care of him and appropriated his revenues till he came of age, and the revenues were usually more than sufficient to compensate him for his trouble. Further, if the ward was of marriageable age, the lord had a right of tendering a husband or a wife, who could only be refused on payment of a sum equal to the sum a proposed suitor would be willing to pay for the marriage; and it is obvious that by tendering a series of undesirable suitors the lord was in a position to make valuable additions to his income. Finally, there were the feudal aids, which varied in their extent and in their objects; the most usual being subscriptions from the vassals towards the knighting of the lord's eldest son, the marriage of his daughter, and the ransom of his person from prison.

Of the forms of tenure the military was the most important, as war is the most important of the interests of primitive man. But there were others. The Church could not be expected to take an active part in battle, though there were prelates of the age who as warriors would not have found themselves at a loss. Church lands were therefore held in *frankalmoin* (free alms), in which there was no stipulation for services, or stipulation only for services of a spiritual kind. Other fiefs—and they are from a legal point of view the most important of all—were held in consideration of money

payments and various services of a non-military kind, domestic or agricultural, which, being of a more useful nature, were held in less esteem and performed by comparatively common men, who are of no interest to those who are searching for the beginnings of the House of Lords.

Now the feudal relation, though partaking largely of the nature of status rather than of contract, had this element of contract in it: that if the lord did not perform his duty the vassal could renounce his allegiance. This he would do when he felt himself strong enough to do it; and though there would be, through the influences of religion and custom which upheld the sanctity of the feudal tie, a certain elementary public opinion for or against him, according as his lord had behaved ill or well, yet in wild and lawless times it was by the strength of his following that he would stand or fall. The question, then, for his followers was whom were they to follow: their immediate lord or his superior? There is an example of a form of homage in which the allegiance due to the sovereign is specially reserved, and in some countries this appears to have been not uncommon. But of the feudal system as a whole it may be said that the vassal owed allegiance to his immediate lord only, and was bound to follow him if he quarrelled with his superior. This obviously was a serious barrier to any centralisation of power and authority. It split up the country into semi-dependent kingdoms, gave strength and sanction to revolt, and left the sovereign with a power which was

often little more than nominal. It was a state of affairs which William was determined, if possible, to prevent in England; and to that end he summoned to a council at Salisbury in 1086 "all the landholders in England, whose soever vassals they were," and exacted from them an oath of allegiance to himself which should override their oaths to their own particular lords. This was only done after twenty years of vigorous "pacification" of the country, during which the old Saxon nobles had been almost extirpated and Normans had been put in their places, and the Normans in their turn had been taught that sovereignty in England was to be a very different thing from the sovereignty which they had been accustomed to tolerate at home. Great English earls like Edwin, Morcar, and Waltheof had revolted, submitted, revolted again, and disappeared ingloriously or retained their lands by the Conqueror's gracious consent; for it was his policy to be magnanimous to the great, however ruthless he might be in his dealings with the small. Wholesale confiscations made clear the way for the new *régime;* and William was careful that single estates should not be too large, or if large should be scattered, except where border warfare made it necessary that there should be a concentration of military force. All the positions of importance in Church and State were filled up with Normans, and the name of Englishman became a name of contempt; and if William had made a promise to his soldiers in the words which Shakespeare puts into the mouth of Henry V on the eve of the battle

of Agincourt :—

> "For he to-day that sheds his blood with me
> Shall be my brother; be he ne'er so vile,
> This day shall gentle his condition,"

there would apparently have been few to complain that he had not kept his word.

Out of these materials were formed the nobility and gentry of England; and if there had been between the new nobility and their kings that harmony which might have been expected among invaders settling in a conquered country, the history of the British Constitution would have been very different from what it actually was. But the newcomers were not satisfied in uniting to plunder the natives. In the first place, William had ideas of government which were not to the taste of his independent followers. What they wanted is seen in the earliest of the Norman revolts, when Roger Earl of Hereford and Ralph Earl of Norfolk in 1075 suggested to Waltheof of Northumberland, the last of the English earls, that they should divide the kingdom between them, and baited their hooks with a reference to the good old times of Edward the Confessor. Waltheof had had reason to be grateful for William's clemency, and would have nothing to say to the plan; but he had married William's niece, and some say that she told her uncle of the negotiations. The result was that Waltheof lost his head. It is not fair at this distance of time to attempt to analyse the

feelings of a wife: probably a Norman lady given in marriage to an English earl was not more kindly disposed to him than can have been the many English ladies of wealth who were compelled to marry Norman adventurers. However that may be, this was the last occasion when an Englishman of importance came into collision with the Conqueror, for the reason that when Waltheof had gone there were practically no Englishmen of importance left. Henceforward we see Norman kings struggling with Norman nobles—sometimes their own sons and brothers—with the mass of the people helpless against both, but finding the nobles perhaps the more deadly oppressors of the two, till the fusion of the races is complete, and vicious and incompetent government unites nobles and people in an irresistible demand for the recognition of national rights.

The oath at Salisbury was only one—though one of the most important—of the instances of the divergence between the views of the king and the views of his feudal followers. He also did much, with the assistance of Lanfranc, to strengthen and reform the Church and raise it to a position of high authority in the nation, while at the same time making it more dependent upon himself. He retained, too, the local English organisation of the courts of the hundred and the shire, at which alone the mass of the freemen of the country came into direct relation with the central government; and he went entirely outside the feudal scheme by organising a system of sheriffs, directly

responsible to himself, who in his name governed the shires. Centralisation was carried still further when under Henry I there began regular circuits of royal justices; but to go into all these matters in detail would be beside the purpose of the present inquiry. It is enough to sketch briefly the various causes which acted as a wedge driven in between the nobles and the crown, and had the remarkable effect within little more than a hundred years of driving the former on to the side of the people.

But though William succeeded in establishing a personal ascendency during the whole of his reign which has not had a parallel in the subsequent history of England, he did not govern entirely alone. In form he was elected by the Saxon Witenagemot, or assembly of the wise men (who governed because they were wise or were called wise because they governed); and in form the assembly of the wise men continued to assist him in the task of government. The name survived for some time, but, it is suggested, only in the writings of a Saxon chronicler who was a "laudator temporis acti": the body became more generally known as the "Curia Regis," the Great Council, or the Council of Magnates. Of its composition there can never be any certain knowledge; and when the country was in a condition of sporadic anarchy, and the king could and did choose whom he would to be his advisers, it is not likely that even contemporaries could have stated with accuracy who had a right to be summoned. To the Witenagemot had

come the prelates and the abbots, the earldormen of the shires, and the noble and wise men of the kingdom, by which was apparently meant the larger landholders. Whether or not the lesser landholders had ever been admitted is a question in dispute, but in the latter days of the institution it is generally agreed that they were no longer present. Indeed, in view of the difficulties and dangers of travel, it was probable that all but the very rich and very powerful remained away with entire content. To the Great Council, or "Curia Regis" (for though the "Curia Regis" afterwards developed into the purely judicial side of the crown's activities, at first there seems to have been little if any distinction between the two), came at the royal summons the king's tenants-in-chief—the feudal lords next below the king in the feudal chain, including the few earls whom a jealous monarch allowed to exist as successors to the Saxon potentates of that name, together with the holders of offices in the royal household who might or might not be holders of land, and the high dignitaries of the Church. The meetings were intermittent, and the records are scanty: for a time apparently they met thrice in the year, mainly for the performance of judicial work. It was long before they showed anything approaching a spirit of independence, it being probable that anybody likely to be independent was not summoned, or would have found it too dangerous to come. There is no record for many years of anything of the nature of discussion, and the functions of the assembly when it

was not judicial seem to have been confined to hearing the king's announcements, and giving the assent which lent some colour of legality to his pecuniary exactions.

Of the problems which have arisen with regard to this assembly, the most important for the present purpose is a distinction which appears to have grown up at some time or times unknown between two classes of tenants-in-chief. Almost from the first they are described as barons, and their holdings as baronies: the council at Salisbury, in 1086, which has already been referred to, is described as a gathering of "archbishops, bishops, counts, barons, and viscounts, with their soldiers"; and as barons it will be most convenient to refer to them. The Church dignitaries, too, were compelled to accept their lands by baronial tenure (an innovation which gave rise to continual difficulties, and led ultimately to the institution of "scutage," or money commutation for military services), and were thus councillors by virtue of their temporal as well as their more ancient spiritual position; but it is among the lay barons that the distinction referred to made its appearance. By the time of John the Common Council of the Realm, whose assent was, by the terms of Magna Carta, made a check upon indiscriminate taxation, contained two groups. Archbishops, bishops, abbots, earls, and "greater barons" received special and individual summonses; "lesser barons" received their summons through the king's sheriff. And the same distinction is to be marked much earlier in Domesday Book,

which was compiled by William I, between landholders who paid to the sheriff and those who paid direct to the king. Attempts are sometimes made to find out what it was exactly which constituted this distinction between the greater and the less, but they lead to little save the general and fairly obvious proposition that the greater were possessed of larger quantities of land. An important consequence, however, does seem to have followed from the difference in the method of the summons. A direct command from the king to his trusty subject was a serious thing, and had, if possible, to be obeyed: a command through the sheriff was less pressing, and probably came to be regarded rather as a matter of form. And as attendance was still, and for a long time remained, more of a burden than a privilege, it is highly probable that the lesser barons soon gradually ceased to attend at all, and by consulting their own convenience missed the opportunity of being the forefathers of full-blown English peers.

It has been already mentioned that the records of what this Council did give little information, but there are certain of its appearances which should be noted before we pass on to the era of parliamentary government. William the Conqueror four years after his arrival (1070) on the advice of his barons called together a great assembly of all the noble and wise and learned in the law, to hear from them the laws and customs of the country; but this must have been an exceptional gathering, summoned for an exceptional

purpose. When he legislated he is stated to have done so with the help of his chief men; but his legislation was occasional and scanty, and consisted of declarations of his determination with regard to such things as the duty of fealty to himself, the guarding of the Christian faith, the procedure and penalties in cases of murder, homicide, theft, and perjury, and a short Act relative to the sale of live cattle; and the function of the great men and the wise was merely to listen with respect and applaud at the proper times. When he took the important step of separating the spiritual and temporal courts, the ordinance was promulgated "in the common council, and by the counsel of archbishops, bishops, abbots, and all the chief men of the kingdom": and this is the formula which with slight variations is constantly recurring for the next hundred years.

When at Mantes, near Rouen, the stumbling of a horse over a historic ember removed the strong hand and the amazing will of the Conqueror from this world, and left two of his sons to quarrel for the throne, the barons seized the opportunity of flying at each other's throats; and we have the spectacle of William Rufus relying upon the common people, who of two evils chose the less, and of an archbishop, Anselm, asserting against the crown the freedom and independence of the subject. Of the Great Council we hear little or nothing in this reign. Three times the king made solemn declarations of his intention to be good; but it was to Lanfranc and to the English people that they

were uttered in times of need, and in each case they came to nothing. Under Ranulf Flambard the most was made of the royal opportunities of appropriating the belongings of others—particularly of the Church, where the method was the simple one of leaving bishoprics vacant and seizing the revenues; so that Church and baronage were in too continual a state of revolt to allow them time or inclination to assist at the councils of the king, even when they stayed at home and resisted the attractions of the First Crusade.

On the accession of Henry I there came a change. Taxation was still oppressive, and the barons were still in revolt, and the English rejoiced when the greatest of them, Robert de Bellême, was crushed; but the Council reappears in the Charter of Liberties (1100) as the body with whose assent (and by the mercy of God) the king was crowned. The judicial system was organised and circuits of justices began: charters were granted to boroughs, and in trade guilds the civic life of the common people began to hold up its head. Law came once more into her own, insomuch that the Saxon chronicler tells us that "in one year after St. Andrew's Mass before Christmas, Ralph Basset and the king's thegns held a 'gewitenemot' at Hundehoge in Leicestershire, and there hanged so many thieves as never were before that was in that little while, altogether four and fourty men"—an outburst of energy which hardly justifies the application of the name of "gewitenemot" to the gathering. Promises of good government were lavish,

and, all things being considered, were fairly well kept; and the reign is marked by a steady and determined attack upon the baronial power, attended with much confiscation, which endeared the king to the native English. But the complaints of the taxed were frequent and bitter, though the short and pregnant sentence of the chronicler who records Henry's death, "Then there was a tribulation soon in the land, for every man that could forthwith robbed another," proved the bitter truth that a king who taxed heavily was better than no king at all.

After Henry I came anarchy. At the crowning of Stephen there were present "very few optimates," but the citizens of London welcomed him with acclamation, and in his election took the place of the council; but in his reign constitutional history retires before the struggle between him and Matilda, and the carnage of bloodshed, rapine, and torture, in which the nobility relieved their pent-up feelings. There were charters, as usual, in which the king promised good government. The first was addressed to the justices, viscounts, barons, and all the king's ministers and faithful servants: the second, which was issued at a Great Council, was witnessed by archbishops, bishops, a few counts, constables, and stewards, and but seven barons. The rest were probably engaged in more congenial employment elsewhere; and the twenty years of Stephen may be passed over in silence, save as an example of what the barons could do when left to themselves. With the accession of Henry II

the air cleared. Once again the Council appears, and now as a deliberative body. The king treats with them on Christmas Day, in the first year of his reign, about the condition of the kingdom, and holds shortly afterwards a General Council in London, at which he renews the peace and laws and customs constituted throughout England from ancient times. They meet at London, Woodstock, Clarendon, Northampton, and elsewhere, following the king. At one meeting an archbishop, Thomas Becket, is defiantly outspoken in opposition to the king on a matter of taxation, thereby lighting a torch, if ever any man did, which has never been put out: at another they assist in advising as to the answer to be sent to the King of Sicily's request for the hand of the king's daughter in marriage. When in 1164 the Constitutions of Clarendon settled the relation between the civil and the ecclesiastical courts, the clergy and the baronage were present in full force, the names of some twenty-eight barons among the many chief men and nobles who were present being attached to the document; and at a later date (1177) a very full assembly, which included milites or knights, "treated long concerning the peace and stability of the kingdom," and assented to a measure which tended to put the castles of the country under royal control. For the first time this national council becomes a fixed and regular institution, consulted in all important matters of State, though even yet not called at regular times. Its size too was growing; for though earls (or counts) were

and always had been but sparingly created, greater baronies were, according to Dr. Stubbs, probably increasing, and Henry II more often called for the assistance of minor barons, and sometimes of tenants-in-chief who did not hold by military tenure at all. It is suggested by the same learned author that there was thus, even at this early date, occasionally something like a fairly complete assemblage of the three estates of the realm, Clergy, Lords, and Commons; though of course, when we come to the Commons after Parliament has begun, we find it a very different body from a collection of minor landholders summoned at the king's caprice. In fact, we are in Henry II's reign face to face with a body which is substantially the House of Lords.

It is about this time, too (1175), that a writer is found using the word "Parliament," though whether or not this word was then applied to the council for the first time it is not possible to say.

But it is not only for this development of the council that the reign of Henry II was an important epoch. The time was rich in reform. Castles that had sprung up on all sides as storm-centres were extensively destroyed, without a thought for the feelings of the twentieth-century tourist, and great lords were compelled to restore crown lands which they had obtained during the disorders of the late reign. The position of the baronage was vitally altered in two ways: "scutage," or the payment of a sum of money in lieu of personal

service, which has already been mentioned in connection with the Church's tenure of its lands, became an established institution about the year 1159, when the king wanted an army to fight on the Continent; and the Assize of Arms in 1181 reorganised and made a fighting force of the old national militia, which included all freemen irrespective of feudal tenure. The king had thus a non-feudal army on which he could rely at any rate against the barons at home; and for foreign wars he simply needed sums of money with which he could hire serviceable mercenaries who would cause him comparatively little trouble. In more peaceful directions the judicial system was elaborately revised by the Assize of Clarendon in 1166, grand juries were organised in roughly the form which distinguishes them to this day, and it is Henry's circuit system which even now causes inconvenience and delay. The jury system was extended to civil cases as an alternative to the heroic method of trial by battle; the last great feudal rebellion was crushed when the fall of Hugh Bigod showed that the people were on the king's side; and the conquest of Ireland which then began, and is alleged to have been continuing ever since, left a legacy to English politicians of which they are still enjoying the fruits.

But this remarkable display of reforming zeal was far too good to last, and Richard I and John took good care to restore the balance. The royal thoughts are now directed almost exclusively to getting money,

and from this time forward the more money the king wants, the nearer does the country come to constitutional government. The council appeared in its most extensive form at the coronation, which was remarkably gorgeous, but heard no charter of liberty read. Perhaps it had forgotten that one was desirable, though already in three weeks Richard had seized all the money he could lay his hands upon and married off nearly all the royal wards. It meets again at Pipewall in Northamptonshire, to assist in dealing with vacant bishoprics and the appointments of ministers, many of which were allotted for a consideration. Bishop, chancellor, and justiciar all paid heavily for their honours, for Richard regarded it as his first duty as a Christian king to find money for the Crusades, and Longchamp, whom he left behind in full control, hastened to follow his example. In the long absences of the king (he visited his kingdom twice during his reign) there were baronial quarrels from time to time, in which the king's brother John took a prominent part. We find councils meeting of their own accord in London (1191) to sympathise with John in his protest against the behaviour of Longchamp, and at one, held at St Paul's, the citizens of London joined the bishops, counts, and barons in the deposition of the unpopular justiciar. Under Henry I the Council had developed a conscious and continuous existence; now, left without a king, it was developing an independence which prepared it for the great struggle to come. This struggle was brought perceptibly nearer by an era of

grinding taxation which culminated in the measures which had to be taken to provide the enormous sum of £100,000 to ransom Richard from captivity. The council was summoned to Oxford in 1193; and whether it deliberated, or whether its assent was purely formal, the result of Richard's lack of caution in Austria was an edict from the queen and the royal justices providing for an "aid" of twenty shillings on every knight's fee, together with tallage, hidage, and carucage on all other land in the country, the surrender of Church treasures to be melted down and the exaction of one-fourth of the revenue or goods of every person in the realm. This was to get Richard back again; and when he returned his second short visit was chiefly occupied with devising further ways of raising money. A council at Nottingham in 1194 lasted four days: the offices of the sheriffs of Lincolnshire and Yorkshire were put up to auction, and a further carucage—a tax upon each hundred acres of land, known as a carucate—was imposed, and more money was spent on a second coronation, for the king had ingloriously surrendered his kingdom to his captor, and received it back as a fief. He then departed from the country for ever; and after a determined and successful protest by the baronage and clergy in 1198 against the intolerable exactions of his justiciar, Hubert Walter (the particular point in issue was whether they were bound to provide troops to serve abroad), John was left to complete the task of throwing the baronage and the clergy entirely on to the side of the miserable common

people of the country. There was indeed another outbreak of anarchy on Richard's death, for the King's Peace died with the king, and was not in theory or in practice revived till his successor was established. But order was restored by means of whole-hearted promises of redress; the elective nature of the kingship was insisted upon by the archbishop at the coronation; John swore a very special oath: and then began the worst reign that England has ever known.

One of the best things John did was to lose Normandy. This confined the barons henceforward to England and made Englishmen of them. He also surrendered his kingdom to the Pope, which further increased the baronial contempt for a king who was no longer entitled to their respect. While John in the course of his quarrel with the Pope was seizing the possessions of the Church, they had looked on with that comparative calm with which it is possible to contemplate the distresses of others; but when the carucage and the scutage went up, and service abroad was once more demanded of them, their resistance became determined and formidable. Twice in 1213 they refused to follow him, and while he was marching such army as he had up to the north and marching it back again without doing anything, a great council was held at St. Albans by his justiciar, Geoffrey FitzPeter, and in this council we see the first faint traces of the House of Commons. The usual bishops and barons were there joined by the reeve and four "legal men" from each township on the royal

demesne. The king not being there, they talked, and probably with some freedom, of many things. They heard more promises given on the king's behalf; reference was made to the Charter of Henry I as the basis of liberty; and what is more important still, the king himself in the same year called a council at Oxford in which the legal men of the royal townships gave place to "four discreet men of each county," appointed in the shire moot or county court "to speak with us upon the business of our kingdom." The four legal men may have been simply called to give evidence as to the taxable capacity of the royal estates; the four discreet men seem to have been there (if indeed the council was ever held, for of that we know nothing) in a higher capacity.

However that may have been, parliamentary government was the last thing that was in the mind of John. When Geoffrey FitzPeter died, the king is reported to have exclaimed that now for the first time was he king and lord of England; and he proceeded to choose as his justiciar Peter des Roches, a man whom the barons could not stand at all. In the king's absence they met at St. Edmunds and vowed war. On his return he made desperate efforts to win the Church to his side. Failing in this, he tried to frighten the recalcitrants with the terrors of religion, but in view of his own relations with holy matters, they were not impressed. Then he suggested arbitration, but their army was ready, and they preferred an immediate

settlement; and finally driven into a corner, on June 15, 1215, at Runnymede, he signed the Great Charter, which, though in substance but repeating with additions the Charter of Henry I, has stood from that time as the monument of the liberties of the people of England.

For the barons had no longer been fighting merely for their own hand. "No freeman shall be seized or imprisoned, or dispossessed, or outlawed, or in any way brought to ruin; we will not go against any man, nor send against him save by legal judgment of his peers, or by the law of the land"; and "to no man will we sell, or deny, or delay right or justice," and "all the aforesaid customs and liberties that we have granted to be held in our kingdom, so far as pertains to us with reference to our vassals, all men of our kingdom, as well clerk as lay, shall observe so far as pertains to them, with reference to their men." Who was responsible for the clauses protecting all men and not the barons only is not known, but it is suggested that they were due to the influence of the bishops, and particularly of Langton, who for long were on the side of the Commons; and that the barons should have accepted them and forced them upon the king is a remarkable proof of the change which had come over their order since the time when they had resented royal encroachments on their right to do as they pleased with their own.

But for our present purpose the most important

clause was that which declared "that no scutage or aid shall be imposed in our kingdom, save by the common council of our kingdom, except for the ransoming of our body, the knighting of our eldest son, and the marriage, once, of our eldest daughter; and for these purposes the aid shall be reasonable; and for the holding of the common council of our kingdom, for the assessing of the aid other than in the three cases aforesaid, or for the assessing of scutage, we shall cause to be summoned the archbishops, bishops, abbots, counts [*i.e.*, earls], and greater barons, severally by our writ; and in addition we will cause to be summoned in general by our sheriffs and bailiffs all those who hold of us in chief; for a certain day, forty days at least from the summons, and for a certain place; and in all writs of summons we shall set out the cause of the summons; and the summons having issued, the business shall proceed at the appointed day, even though all those that are summoned shall not have come."

By way of security twenty-five barons were appointed to see that the terms of the treaty were duly carried out.

Here is the first definite statement of the constitution and the functions of that council of the realm which has been making spasmodic and uncertain appearances according to the caprice or the needs of the king. In these words the council takes its place definitely as part of the Constitution; a gathering of the two estates of

the realm, the Church and the Peerage, of which the first duty is to keep a watch over taxation. To make it the House of Lords it was only waiting for the appearance of the third estate, the Commons. Nor had it long to wait.

CHAPTER II

FROM THE GREAT CHARTER TO THE MODEL PARLIAMENT

We have traced the process by which strong kings earned the ill-will of their nobility by keeping them unexpectedly in check; weak kings, by allowing them a free hand to show their rapacity and incompetence, brought the people over to the side of royalty, and bad kings drove the nobility and the people to make common cause. We have seen how the council of the nobles, uncertain in its composition and irregular in its meetings, gradually developed into a formally recognised part of the Constitution. Through it all the theory of the right of popular representation had been coming to birth. The distinction between Norman and English was disappearing—in fact, by the time of the Great Charter may almost be said to have disappeared. Even of the earls and barons few were now of pure Norman blood. Families did not long survive in those riotous days, and a new nobility had grown up which resented the intrusion of such foreigners as Peter des Roches, and identified itself with the people of England. The

barons of the north country were the foremost in this movement, and it was they who had resisted most stoutly the tyrannies of John. The policy of the Conqueror had retained the administrative organisation of the shire and hundred courts, in which the common people were brought into direct relations with the local lords and, through the sheriffs and justices, with the king. In these courts appeared the whole body of freeholders of the neighbourhood, and the freemen of the towns and villages; and among them the representative system had already acquired a respectable antiquity. We find at various times twelve legal men from each hundred, twelve legal men from chartered boroughs, the reeve and four men from each township, and politically their chief function was to report on taxable property or apportion taxation already imposed among themselves and those whom they represented. On the amount of the tax they had no voice, but it was obviously necessary and convenient that by some such means the proportion should be decided which each man was to pay. Once or twice, as we have seen, this organisation makes its appearance in the Great Council; and these appearances had only to become regular to make the Houses of Parliament complete.

John had never intended to pay any attention to the promises contained in Magna Carta, and only his timely death saved the country from what promised to be a long and disastrous civil war. As it was, Louis of France, at the invitation of the barons, had obtained a

foothold in the country, and was only ejected after considerable trouble; and a good deal of the minority of Henry III, when the council might have been occupied in consolidating its power and training an infant king in the new ideas, was wasted instead in internecine struggle. There was a council at Bristol attended by the bishops, some earls and barons, and many knights, which revised and suggested alterations in the Charter, and other councils met frequently during the reign; but the country was in effect ruled by regent and justiciar till the king came of age. Henry himself proved scarcely less faithless than his father, and his relations with the barons were seldom good; but they were rapidly learning the power of the purse, and aids demanded by the king were repeatedly refused, or granted on the condition that he would confirm charters or dismiss his foreign favourites, or do other things equally disagreeable to a monarch of spirit. It was round this question of foreign favourites that the struggle raged for a large part of the present reign, for the barons saw threatened thereby the personal control over the government which during the king's minority they had, by appointing the regent, the justiciar, and the chancellor, been able to acquire. Though they were probably acting from no higher motive than personal annoyance, their action is of constitutional interest as foreshadowing the later claim of Parliament to remove ministers of the crown. On one occasion they went so far as to refuse to come to the council, and only the

earnest representations of the Archbishop of Canterbury averted the danger of a rebellion by persuading the king to grant the barons' demands, with, however, the usual mental reservation that a promise, if inconvenient, need not be kept. But though he frequently broke his promises, Henry was not in the same position as his predecessors. They had not hesitated to extort what they wanted with violence; but as violent a king as any of them had been seen surrounded by his own subjects in arms, sullenly and unwillingly doing an act which he regarded as signing away his kingship; and the sight had changed the whole political atmosphere. Henry III, too, more than any other king, was extravagant—not with the extravagance of a warrior, which the barons perhaps could understand, but with the extravagance of a courtier, flinging doles to relatives and worthless Frenchmen, and indulging in luxurious and frivolous magnificence his artistic soul. And while lavish on the one hand in his expenditure, on the other he found himself, for a king, comparatively poor, for the troubles and misgovernment of John's reign had resulted in serious wastage of the royal estates. Indeed, so hard pressed was he that on one occasion (in 1237) he actually expressed his willingness, if money were granted, to allow a committee of the council to supervise its expenditure. How this idea developed is a matter of later history; for the present it was in advance of the time, and nothing seems to have come of the suggestion. It was a proposal made by Henry *in extremis*, and not likely

to be acted upon; but however reckless, ole now came constitutional, the king was, he could normous claim necessity of these humiliating applicatioich he had council, followed frequently by humiliating hich the The barons no longer hesitated to use their power, als a respectful subservience was a thing of the past. In 1242 there occurred the first real debate of which we have any record. The king of course wanted money, this time for a war with France, and the assembled prelates, earls, and barons seem to have pointed out with some force and at some length the various reasons why he ought to wait. He got the money in the end, and with it covered himself with ignominy for a short time in France; but some plain speaking must have been reported to him, though it does not appear to have done him very much good. At any rate, it was repeated two years later, and this time actually in his presence, after the council had given one more curious little foretaste of the times that were to come by splitting into three divisions, the clergy, the earls, and the barons deliberating each group by themselves. After these deliberations they soared to the summit of impertinence by demanding that the king, though of full age, should appoint a justiciar, a treasurer, and a chancellor, of whom the council should approve. At the same time proposals were in the air which went farther than this; proposals for the appointment of four councillors to control the king, supervise his expenditure and see that he observed the charters, and some of these councillors

earnest repre[illegible] to be chosen "by the whole body of the [illegible]averted the[illegible]nother four years passed, and in 1248 and king to g[illegible] demand was repeated. There were more usual m[illegible]more stern refusals of money, more extortions, nee[illegible]icularly from the citizens of London, more bleeding of the Jews; and though the king once more confirmed the charters and got his money—which was cheap at the price—the right to choose the ministers of the crown remained a thing of the future. But it was a good beginning to the discussion of a great question.

Events moved still more quickly in 1254. Henry, with the proceeds of a tenth and a scutage of three marks from the tenants-in-chief, had gone to spend it in Gascony, when the regents he had left behind took a further step towards calling the House of Commons into being. They summoned to Westminster four knights from each shire and representatives of the lower clergy from each diocese. This, as we have seen, was not unprecedented. Knights of the shire had attended or been summoned even in the reign of Henry II; and their function in the present case was merely what it had always been, to give a show of popular authority to a taxation which they were powerless to resist. But hitherto these little intrusions of a class lower than the baronage into the councils of the nation had been curiosities; this Parliament of 1254 is the symptom of the changing spirit of the times, the first step in a movement which now became continuous and rapidly gathered force.

The trouble between Henry and his people now came to a head. The king was faced with an enormous claim from the Pope, due to complications in which he had become involved in Sicily—complications for which the barons refused to accept responsibility. The quarrels between the king and the council were frequent and bitter: the royal debts were beyond all reason; extortion and tyranny were driving the country to despair; a failure in the harvest added to the general confusion; and, as one historian (Lingard) puts it, "the people were willing to attribute their misery, not to the inclemency of the seasons, but to the incapacity of their governors" —a tendency which may be seen in operation among those whose party is out of office to the present day.

In these circumstances came forward the man whose name is inseparably associated with the birth of popular liberty. By a curious coincidence, Simon de Montfort was one of those hated foreigners whose presence had very justly roused the British wrath. Twenty years or so before he had come across from France, established a claim to the earldom of Leicester, married the king's sister, and risen into high favour at court. The barons had violently objected, but their opposition did not last for long. He was a man whose character has always been referred to in terms of enthusiasm. Harassed with the cares of the governorship of Gascony, he turned for his consolation to the Book of Job; and the light-headed fickleness with which he was treated by Henry had left in him no love for the monarchy. He it was who, with

the Earl of Gloucester, headed the baronage when they gathered in arms at Westminster, in the month of April 1258. The king on entering marked an unusual and warlike air about the meeting. "Am I your prisoner?" he asked; and the reply of Roger Bigod summed up the situation. "No, sir; but by your partiality to foreigners, and your own prodigality, the realm is involved in misery. Wherefore we demand that the powers of government be delegated to a committee of barons and prelates who may correct abuses and enact salutary laws."

The king's request for money was refused; the committee were to be appointed, twenty-four in number, and the barons drew up their scheme and met in the "Mad Parliament" at Oxford two months later. "Mad" was the name given to it by the supporters of the king. The barons were all in full armour again, and attended by their vassals. The long recital of the woes of the country showed that Magna Carta, though excellent in principle, had proved ineffective in practice; this time there was to be more than a formal declaration of rights. The committee of twenty-four contained twelve men for the king and twelve against. These twenty-four were to choose a standing council of fifteen; this standing council was to meet in Parliament three times a year with twelve chosen barons; and the question of the appointment of the officers of state seems to have been compromised, at any rate for the present. The twenty-four ordained, among other

things, the rendering of accounts annually by the sheriffs, the justiciar, the treasurer, and the chancellor, and provided that four knights should be chosen from each shire to present to Parliament complaints of the royal administration. Under the new *régime* the foreign party were to some extent expelled, Simon de Montfort managed to do something towards reform, and the knights of the shires came forward prominently as an organised body with an expression of their wishes. But on the whole it was a fortunate thing that the barons could not agree among themselves, and that Henry was as incompetent a king as he was. If the king had kept his promises and all had worked together in harmony, the country would have been saddled with a close oligarchy as narrow and as short-sighted and twice as powerful as the worst of kings. But Henry could neither keep a promise nor inspire in others the idea that he was likely to keep a promise: the barons were all at loggerheads, war broke out within five years, and the danger was at an end.

But before the actual outbreak Simon de Montfort had once more (at St. Albans in 1261) toned down the aristocracy of the council by yet another summons to the sheriffs to send up three knights of the shire. Indeed, these knights were becoming an important body, as, if there was to be fighting, it was of vital importance to both sides to secure their aid. When, after various attempts at a settlement, Simon proceeded to defeat and capture the king at Lewes (May 1264), they

received their summonses to the Parliament which met in June almost as a matter of course, though in the further experiment in constitution-making in which that Parliament indulged they were not allotted any prominent part. The scheme was that three barons (whether chosen by their fellows or self-appointed is uncertain) were, as electors, to choose in their turn nine others as permanent councillors, to advise and to control the appointment of ministers; and three, like a modern secretary of state, were to be always in attendance upon the king. A vacancy in the office of an elector was to be filled by the council; the electors were themselves to appoint to vacancies in the committee. Some think this was broader than the arrangement of 1258, others hold that it was more oligarchical. Whatever it was, its life was short, and its interest is entirely eclipsed by the events of the following year.

In 1265 the three "electors" were Simon de Montfort, the Earl of Gloucester, and the Bishop of Chichester. But Simon's position was precarious. The king was sullen, and waiting for the first opportunity for revenge. Queen Eleanor was preparing to sail at the head of an army from France. The papal legate was breathing anathemas. The royal party were on the alert. Repeated demands had been made for the release of the princes, Edward and Henry, who had been detained as hostages after the battle of Lewes; and, ostensibly for the purpose of sanctioning their release, Simon sent out summonses for a Parliament to meet at Westminster in

the first month of the year. There were not many barons whom Simon could trust. The Archbishop of Canterbury and several bishops were hostile, but the majority of the bishops and clergy were on his side. Five earls (including himself) and eighteen barons only received writs, but the clergy were quite extensively represented. The sheriffs were ordered to return two discreet knights from each shire: they, as we have seen, had joined the august assembly before. But now a new and a strange thing happened. For the first time (or almost the first time—for legal men from the royal townships came once in the reign of John) we meet two citizens and two burgesses from each of twenty-one specified cities and boroughs. Only if we could throw our minds back and enter into the feelings of the time would it be possible to appreciate the effect of this sudden intrusion of the commercial non-landed element into a gathering steeped in the class prejudices of a military and ecclesiastical oligarchy.

But it was an accident, like most of the phenomena of our remarkable Constitution. The name of Simon de Montfort has been covered with glory; but historians, with that cold-blooded preference for the accurate rather than the picturesque which distinguishes some of them, have not been slow to point out that, lacking support from the baronage, Simon had to turn elsewhere; that the citizens had been extensively in his favour; that he was careful to choose the cities and boroughs he wished to honour with his writ; and that

he called a Parliament six months later in which not a single citizen or burgess appeared. In fact, it is even pointed out that this first Parliament of the nation was not a Parliament at all, but simply a meeting of the supporters of Simon de Montfort, which he might not have called at all if it had not been urgently necessary to strengthen his position as much as possible in the face of the gathering storm.

However that may be, and whether Simon de Montfort was thinking of his country's future or of his own, these humble and worthy townsmen found themselves among the great ones of the land, and heard for the first time that the strict observance of the charters and ordinances was enacted "by common consent of the king, his son Edward, the prelates, earls, barons, and commonalty of the realm." And if they did not thrill with a sudden sense of their own importance, that was probably because they were entirely engaged in listening with a profound respect, and were, in fact, at the moment of no importance at all. No man realises at the time that his actions are big with destiny, and there is no reason to suppose that Simon or his citizen and burgess supporters were wiser than other members of the human race. But there is, at any rate, this to be put to the great earl's credit: that he was hailed as the protector of the oppressed and the saviour of his country while he lived, and when he fell at Evesham, Henry found it necessary to decree that he was not to be regarded as a saint.

Though the life of Simon's Parliament was brief, the lesson of it was not lost even upon his enemies. As has been already mentioned, his summoning of representatives of the Commons seems to have been merely a temporary expedient, and during his lifetime it did not occur again. But even Henry, in 1269, summoned to a religious assembly at Westminster "the more powerful men of the cities and boroughs," though whether they played any part in the Parliament that followed is left in doubt; and on the mind of young Edward, the victor of Evesham, the effect of the policy of his defeated adversary was profound. In death the soul of Simon de Montfort still lived on. Quarrels with his fellow earls and the vigour of Edward had brought him and his power to a sudden end, and the rest of Henry's reign was occupied in subduing and punishing the remnant of his supporters, and healing the wounds left by a long period of disorder and civil war. On the death of the king, Edward, though absent on a crusade, succeeded without any opposition or question to the throne; a point which is constitutionally important, for it marks the first recognition of the right of the heir to follow as a matter of course. But more important from our present point of view was the fact that before the king returned, his regents, in 1273, summoned to take the oath of allegiance not only the prelates and barons, but four knights from each county and four citizens from each city; and the Statute of Westminster I. a comprehensive "omnibus" Act passed in

the king's first Parliament in 1275, is expressed to be enacted not only with the assent of the prelates and barons, but also by "the commonalty of the land thither summoned." This statute contained a provision that elections were to be free, so that it is clear that the idea of the representation of the people was rapidly becoming an integral part of the political consciousness of the nation. That the council of barons and prelates should meet regularly was a thing which had now passed from the region of question or dispute. With the subject-matter of its proceedings we are not immediately concerned. Taxation was, of course, the chief object of undying interest; but we find them dealing with the national army, the alienation of land, the administration of law, and even the registration of traders' debts and their recovery by distraint, in a manner which suggests that they were approaching the modern theory of a legislature perpetually in action, and that, even where their presence is not recorded, the merchant and trading classes of the country were finding a means of making their voices heard. But however much the council might discuss, the introduction of laws still remained the undisputed prerogative of the king, and Parliament's only power was to insist upon it as a condition to the grant of taxes.

And though taxation under Edward I was comparatively light, and the chief struggles on the subject were between the king and the clergy, who made grants in their own convocations which were binding, of course,

only upon themselves, yet the need of money was a driving power which produced important results. Wales was the storm-centre during the first part of the reign, and its conquest required money. One method was to go round and obtain promises of subscriptions from individuals, shires, and boroughs. This was occasionally done, but not found very satisfactory when much was required. In 1283 a curious expedient was tried. Two councils were called, one at York and one at Northampton; and no House of Lords was at either of them, for the barons were still in Wales, having helped the king to crush the last despairing resistance of Llewelyn in the wilds of Snowdon. But the clergy were represented by their bishops, archdeacons, heads of religious orders, and proctors; and by writs to the sheriffs there were summoned four knights from each shire and two men from each city, borough, and market town. The two estates sat apart, and granted different amounts, the "Commons" insisting that the baronage should agree to be taxed to the same extent as themselves. They did not appreciate, as would the House of Commons in some circumstances at the present day, the privilege of sitting all alone. But these assemblies had taxation as their only object; more like a real Parliament was the gathering in September of the same year at Shrewsbury, though even here the proceedings were judicial rather than political, for the occasion was the trial and condemnation of Llewelyn's brother David. The counties and twenty cities and boroughs returned representatives.

The clergy were not summoned, for, as will be seen in the attitude of the bishops of a later date, it was not regarded as proper for them to take part in the proceedings on a capital charge. Parliament met frequently thereafter, and assented to important Acts, but the attendance of any other than the bishops and the barons was by no means regarded as essential. A great legal statute "Quia Emptores" was passed in 1290, "at the instance of the magnates," though within a week knights came up from the shires; and a measure so universally popular as the banishment of the Jews was carried out by the king without open reference to Parliament at all, though the golden eggs from the Jewries were so useful when Christians were obdurate that this killing of the bird comes rather as a surprise.

It was now being recognised as an advisable thing to obtain some formal show of consent from the people to be taxed; and this in itself was a great step gained, even though knights, citizens, and burgesses might be regarded as of no importance from any other point of view. But the critical years were approaching which were to settle the fate of the English people. Taxation had been throughout Edward's reign comparatively moderate, but in 1294 there came a sudden change. Wales was still in disorder; and a violent quarrel between French and English sailors, coming on the top of troubles between Edward and the French king over Gascony, led to an enthusiastic declaration of war. The taxes immediately

threatened to become overwhelming. The barons, scenting battle, were cheerful in their giving; but the wool merchants whose wool was seized, the monks and clergy whose treasure was commandeered, viewed the situation with alarm. The Dean of St. Paul's went so far as to die forthwith on hearing the king's demands. A Parliament was summoned which included knights, and granted a tenth of all movables, a larger sum being collected privately from the cities and boroughs. John Balliol, burning under indignities endured at the hands of the king's courts, and seeing hope from France, complicated the situation by rousing Scotland to arms; and a French fleet was spreading terror on the English coast. The king turned his attention first to Wales, where he restored calm; a council followed, in June 1295, of bishops and barons, and, amid wars and rumours of wars, on September 30 and October 1, 1295, writs were issued, calling to Westminster the first real Parliament of England, the model of all Parliaments to come.

The writ to the archbishops, quoting from the Roman law, expounds the principle which from now onwards becomes the key-stone and the justification of parliamentary government. "As the most just law urges and lays down that what touches all should be approved by all, so is it abundantly clear that common dangers should be met by remedies thought out in common." The king of France, the writ points out, has deceived us in regard to Gascony; a great fleet

has already invaded our shores, the very language of the country is in danger of extinction. The Archbishop is therefore bidden "on his faith and love" to come to Westminster; with solemn injunction (the "præmunientes" clause) that he is to bring with him the prior and archdeacons of his church in their own proper persons, and one proctor for the clergy of each cathedral, and two proctors for the clergy of each diocese, "having full and sufficient power from their chapters and clergy to come with you, then and in every way to treat, ordain, and act with us and the rest of the prelates and chief men, and the other inhabitants of our kingdom," as may be necessary to meet the dangers referred to. Such writs went to the archbishops and bishops, and (without the "præmunientes" clause) to sixty-seven abbots and the heads of the religious orders, from which it is seen that it was then the intention that the representation of the first estate of the realm, the Church, should be very full and complete. That it very soon dwindled down to the presence of archbishops and bishops alone in the House of Lords was due to the wishes of the clergy themselves, as will later more particularly appear. To seven earls and forty-one barons went writs of a less confidential and explanatory kind. "Whereas it is necessary to take thought for the remedies to be adopted against the dangers which in these days threaten the whole of our kingdom, we wish to parley and treat with you and the rest of the chief men of our kingdom. We

command you therefore"—as in the archbishops' case. The sheriffs also are told of the dangers which are imminent, and bidden to cause to be chosen without delay two knights from the shires, two citizens from each city, and two burghers from each borough, "of the more discreet and able for work," and to send them at the appointed time to the appointed place, with full and sufficient powers from the presumably less discreet and laborious persons whom they represent.

How many came we do not know. To the chronicler the event is of no outstanding importance. We merely are told that the clergy, magnates, and people hastened to Westminster for the guarding of the king out of their substance, and the king asked for a subsidy and got it. The estates discussed the matter separately among themselves, and the clergy proved the most obdurate of the three. Whether they all met in the same chamber is not stated, though it is not unfair to assume that in their private discussions they sat apart, while their decisions were announced in a general assembly. Much in the history of this period and for a considerable time to come is left vague and shadowy. There are countless matters for discussion arising out of the relations of the three estates to the king and to one another in the all-important matters of legislation and taxation. But the "Model Parliament" of Edward I settled finally and for ever the question of the right of the general body of the freeholders of the counties and the citizens and burgesses of the towns

to take part in the deliberations of the national assembly as a matter of course; and the confirmation of the charters by the king in 1297, with his declaration, "for no occasion from henceforth will we take such manner of aids, tasks, or prises, but by the common assent of the realm and for the common profit thereof, saving the ancient aids and prises due and accustomed," supplied the assembled commons with the text which summed up the idea which had been gradually forming in men's minds that taxes were the necessary expenses of government and not the personal perquisites of a feudal lord.

CHAPTER III

FROM THE MODEL TO THE GOOD PARLIAMENT

THE political centre has now changed. From this time forward the Commons hold the stage as the protagonists in the struggle for popular liberties. The historian gives the first place to their gradual advance in power and importance, their slow but sure progress in the acquisition of control over taxation and legislation, their stout protests, their periods of subservience and relapse, their privileges and their constitution. The change is, of course, not immediate or sudden; but the work of the prelates and barons who had moved upwards towards the ideal of a self-governing nation, sometimes under the influence of a nature nobler and more far-seeing than his fellows, but more often prompted by the elementary instincts of self-protection and self-aggrandisement, now passes to other hands. These other hands were often more competent to do the work, and the brains which guided them were often inspired by the highest and most statesmanlike motives. But it is unnecessary and unwise to attribute too many of the

heavenly virtues to most of the champions of liberty. It has been the characteristic of the Briton, whether prelate, peer, or commoner, that when you touch his pocket the result is an epoch in the history of the Constitution. That is what is sometimes meant by saying that the Constitution was grown, not made.

With all these matters of much interest and greater complication we are not now concerned, except so far as they directly affect, or are affected, by one branch of the legislature. It is a wide exception, but it does not prevent a substantial limitation of the scope of the inquiry.

The institution of a full Parliament of the three estates in 1295 did not stop the prelates and the barons from acting in their council as before: the difference was that it soon became a recognised fact that without the Commons they were not a real Parliament. Edward, for instance, met the barons alone in 1297; but he was then in the middle of a violent quarrel with the clergy, who in their refusal to pay taxes had the moral and spiritual support of a papal bull. Like the Commons on an earlier occasion, the barons when they found themselves alone became very cautious about money; but, apart from this, the main question then in issue was service abroad, in which they were the people primarily concerned. It was in bitter struggles with them that the last few years of Edward's life were spent: they presented their list of grievances; they, with the knights of their shires, exacted the confirmation of the charters

and the great statute restrictive of taxation, "De tallagio non concedendo"; and it was they who drove him into courses which somewhat dimmed the lustre of an otherwise brilliant reign. And when the great king died in his last effort to complete the conquest of Scotland and crush the growing power of the valiant but bloodthirsty Robert Bruce, what followed was very like what had followed the death of William the Conqueror. The earls and barons, finding the restraint of a strong king no longer upon them, broke loose, tried their own hands at governing the country, and made as great a failure of it as any monarch. But there was this difference, that a popular assembly was now gradually discovering its own importance, and profiting from the weaknesses and dissensions of barons and of kings.

The reign of Edward II was one long test of strength between the two powers. The king was determined to shake off the barons; the barons were equally determined that they, and they alone, should be the king's advisers. The struggle centred round the picturesque figure of Piers Gaveston, a Gascon who had been Edward's playfellow and constant companion, and had acquired an influence over him which made the harmonious working of crown and baronage impossible from the beginning. Gaveston was the typical irresponsible court counsellor, unhampered by any instincts of nationality, removable at caprice, whom it was the policy of Edward to encourage: created an English earl, but as far distant in spirit from the English earls as a brilliant

and unscrupulous foreigner could be. That he was a foreigner need not of itself have been against him if he had shown any willingness to adapt himself to his new country. Simon de Montfort was a foreigner, and had arrived at a time when foreign favourites were held in peculiar hatred; foreign lawyers had inspired much of the legislation of Edward I. But Gaveston was a flippant person who amused himself at the expense of the aristocracy. Parliaments were meeting: there had been one immediately after the king's accession, which granted an aid and deliberated on his marriage; but the Commons probably cared little about the presence or absence of witty Frenchmen, and it was in a great council of the clergy, earls, barons, and justices that the conduct of the offender was discussed and his banishment decreed. The baronage joined with the Commons at times in demanding redress of grievances: as when, in 1309, eleven articles were presented to the king complaining of exactions and abuses, chiefly affecting the merchant and trading classes. But on the whole the attitude of the barons was dictated by motives of a personal and selfish character. The return of Gaveston in a little over a year—he had been making what he could out of Ireland in the meantime—brought on the crisis; and at a great council in 1310, which was not a Parliament, the king, to save Gaveston, consented to put the government into the hands of the twenty-one "Lords Ordainers," who drew up a scheme of government which gave the baronage one more chance of establishing a close oligarchy,

if only they had shown some capacity for using their opportunities. All three estates were summoned in 1311, to hear the result of their deliberations, and after discussion added thirty-five more articles to the six which were put before them; so that the Commons seem not to have seen the dangers inherent in the scheme. Many of the ordinances were of general interest, and four provided for the expulsion of Gaveston, on which the assembly was firm; but the barons had made ample provision for their own supremacy. No gifts were to be made by the king without the consent of their own small committee (by this they had Gaveston again in mind). The consent of the baronage was made necessary to the filling up of all great offices of state; and without their consent the king was not to quit the realm or go to war.

It is true that the Ordainers were a temporary expedient, that there were to be regular Parliaments; and, as has been pointed out, Parliament played its part in drafting the ordinances themselves. But the baronage clearly regarded themselves as the natural governors of the country, willing graciously to allow the Commons, as the king himself had quite lately allowed them, to be present occasionally, and observe how excellently the wise can govern. Unfortunately, however, Gaveston was not banished, but seized by three earls, who summarily cut off his witty head. This was not conducive to a lasting peace between the royal and baronial parties; and the sound thrashing administered to the

king by Bruce at Bannockburn did nothing to increase the authority of the crown. Nor were the barons doing any better. Their leader, the Earl of Lancaster, was a man of little ability, and entirely incompetent as an organiser. The country was in a state bordering on anarchy. The king was continually struggling to escape from the ordinances he had accepted. General Parliaments were held, which dismissed his officers and replaced them by friends of the earl, regulated the king's household, and even placed the king on a daily allowance, an excellent precedent to be remembered in the future; and a curious foreshadowing of Cabinet government is seen in 1316, when the earl was made president of the Council, and it was laid down that nothing should be done without the consent of the council, and "any member of the council who should do any act, or give any advice dangerous to the kingdom, should be removed at the next Parliament." If this system had been allowed to develop it might well have led soon to something like the modern practice; but on the other hand the Commons were as yet too weak to make themselves effectively heard, and as the removal of members of the council was to be in the hands of the whole Parliament, of which the Commons only formed a minority, the more probable result would have been the close oligarchy which the barons no doubt intended. But the knights, citizens, and burgesses had at any rate time to learn what could be done in the way of keeping a worthless king in order before

the barons, much to the advantage of the crown, began quarrelling violently among themselves. There was a little interlude of comparative peace in 1318, when with the sanction of Parliament a new council was appointed of seventeen bishops, earls, and barons; but trouble soon broke out afresh (this time largely on account of Edward's second great favourite, Hugh le Despenser), and threw the country again into a hopeless condition of misrule and misery. Lancaster made nothing of his position, and played the *rôle* of a Simon de Montfort with very poor success. The Despensers were hotly attacked in Parliament, the complaints being that they had attempted to assume the position which the council desired for themselves. The king took up their cause, roused into energy by an insult to the queen, whose reputation at the best was not robust, and required careful protection; and the defeat and execution of Lancaster put an end for the present to the barons' attempt to establish themselves as the government of the country. There was no reason to regret their failure.

After a short interval for captures, imprisonments, and executions, the king was left to choose his own advisers, and the ordinances came to an end. But their end was remarkable. In fact, no doubt, it was the work of Edward and the Despensers; in form it was the occasion for a solemn declaration of the highest constitutional principle. A Parliament met at York (1322) with the representatives of the Clergy and the

Commons present in full force. Wales, too, for the first and only time before the reign of Henry VIII, sent its members. The ordinances of 1311 were entirely repealed, as having been too exclusively the work of the baronage; and it was laid down that "the matters which are to be established for the estate of our lord the king and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established in Parliaments by our lord the king and by the consent of the prelates, earls, and barons and the commonalty of the realm, according as hath been heretofore accustomed." Taken with its surrounding circumstances, this was probably intended to be a meaningless concession by the crown for the purpose of winning popular support against the recalcitrant barons, just as the barons in the past had often obtained real concessions for the people to secure their support against the crown. Thus by the falling out of their rulers humbler folk came by their own; and this particular declaration has become one of the fundamental axioms of the Constitution. But the years that followed it were years of relapse. Edward and the Despensers took care to restore in form the rights which the Ordinances had purported to secure, but the rest of his reign was an orgy of misgovernment and civil disorder. Violent quarrels with the Church, hopeless anarchy at home, repeated meetings of Parliaments which did nothing, an invasion from France under the faithless queen which brought to a head all the gather-

ing hatred against the king's ministers, extensive hangings and beheadings of the court party, were the prelude to the capture of Edward and his deposition with all due parliamentary formalities. The mob shouted approval of the appointment of young Edward III; but it was all the work of riotous and revolting barons led by a vicious and adulterous queen, and, save for the shouting, the Commons had little to do. But once more they had an object-lesson in the fate of weak and worthless kings, and found precedents to store up for future use.

The new reign began with the appointment of a council of regency chosen from the bishops, earls, and barons in a Parliament (1327) whose meeting was signalised by a petition from the Commons, in which we trace unmistakably the hand of Henry Earl of Lancaster, the brother of the late earl. The statute based upon it, however, is important as showing the first faint stirring of the Commons as a body initiating legislation; and further petitions during the present reign suggest that they were now beginning to awake to an appreciation of their powers. It is also to be marked that we are coming now to the period when Parliament develops a tendency to split itself into two houses. At first, so far as can be ascertained, the four groups, the clergy, the barons and earls, the knights of the shire, and the burgesses, had deliberated and made their grants apart. The clergy, save for the bishops, did not long interfere in parliamentary affairs.

The bishops, originally holding lands in "free alms," had been compelled, as we have seen, for purposes of taxation, to hold by ordinary baronial tenure, and their position in the councils of the king rested upon their double capacity as both spiritual and temporal lords. But by the rest of the clergy representation as provided for in the "præmunientes" clause of the archbishops' writ was not regarded as a privilege. "No representation without taxation" was the motto of the age; and as they were already represented and taxed in their ecclesiastical convocations, both by the Pope and, with the Pope's sanction and their own consent, by the king, they preferred to remain under such protection as their spiritual position could give them. It was no doubt this semi-independent attitude which enabled the prelates so often to take the lead in protests against tyranny; and we have seen Edward I engaged in a violent struggle which was due to the Pope's refusal to allow the clergy to pay anything at all. The heavy hand of the king had prevailed then over the remoter terrors of excommunication; but the spiritual advantages of the clerical position were not to be lightly given up, and the "præmunientes" clause was either not obeyed at all, or if representatives did come, they sat and deliberated jealously apart. Their attitude was never seriously challenged, and they continued to vote their grants in convocation till 1664, when Lord Clarendon and Archbishop Sheldon made an informal arrangement which put an end to the

separate taxation of the clergy and placed them on a level with the ordinary members of the community. But they had abandoned for ever the right to be members of Parliament.

Over the baronage too at this period there came a change of importance. Originally, as we have seen, the "greater barons" had been the tenants-in-chief of the crown by military service, who held some large but undefined quantity of land which distinguished them from the lesser tenants-in-chief. There has been much discussion as to what was the qualification on which the right of summons to the Parliament of Edward I depended. The natural inference would be that it was the holding of land on baronial tenure from the crown; but there is no doubt that many who so held were not summoned, and there is evidence that one at least was summoned who did not hold by barony at all, and that others were summoned who did not even hold their lands of the crown. There was not in England the theory of a noble caste separated off from ordinary people which is found in other countries; the privileges of peerage belonged to the peer himself, while his children and his relatives were, as they now are, only commoners. The solution cannot therefore be found in that direction. But whatever may have been the case in the earlier councils, it is generally agreed that the creation of the baronage as an estate of the realm was due primarily to the exercise of the prerogative of summons by the king, and that the summons went to a

far smaller number than would be called up for military purposes. The question whether or not the discretion of the king was unlimited was not raised at the time, for the simple reason that, save for the wealthiest and most powerful, attendance was a burden which was, if possible, to be avoided. And as that question was not raised then, it is never likely to be settled now. But one limitation upon the royal prerogative seems to have been established fairly soon: when a man had once been summoned, and had obeyed by "taking his seat," then the summons came as of right to him and his heirs for ever. Various dates are fixed as marking the beginning of this rule, which is now undoubtedly a part of the law of the land. Dr. Stubbs regards it as possible that the practice began as early as the Model Parliament of Edward I. Another authority takes the fifth year of Richard II; and Hallam is inclined to think that the rule was not really established till the reign of Henry VII. In the period, at any rate, which we have now reached this can be said with certainty: that the peers of the realm were those who by the royal prerogative were summoned to Parliament, and that the right to the summons rested usually, though not invariably, upon tenure.

Beneath the greater barons were the larger number of tenants-in-chief, who for reasons not definitely ascertainable were called "lesser barons" in Magna Carta, and were summoned by a general writ to the sheriffs of the counties. It is suggested that these may have been

newly created barons, or barons who had come down in the world, and that the ancient and wealthy members of the order insisted that they should be treated as inferiors, with the result that they became in time indistinguishable from those who held by knights' service. Indeed, there is some difficulty in any case in drawing a clear distinction between the baronial and the knightly fief. We do at first find the knights of the shire when summoned to the council or Parliament tending to identify themselves with the baronage, with which they were most closely associated by interest and habit. But on the one hand they represented not only tenants-in-chief of the crown, but all the freeholders who assembled in the county court; and on the other they were in such a position that they had to bear the full weight of the baronial tyrannies. Both causes probably contributed towards their assimilation with the citizens and burgesses, the undoubted representatives of the Commons. At one time it was possible that they might form a fourth estate, but the writs always include them generally among the "commonalty," and by the time of Edward III they had definitely taken the side of those with whom they regularly acted in the judicial and financial business of their respective counties. The great distinction which was bound in the long run to produce this result was that the barons represented themselves alone; the knights represented others—a position which from one point of view decreased, and from another enhanced, their authority and power.

With the clergy thus settled elsewhere, the knights parting company from the baronage, and the baronage becoming transformed into Lords of Parliament with a definite title derived from the receipt of the royal writ, the great assembly of the nation was well on the way towards the adoption of its present form as the House of Lords and the House of Commons. Progress was slow but sure. Till Mortimer and Queen Isabella, who had been the leading spirits of the revolution, were removed there was confusion and disorder; but when Edward was left to himself, his wars abroad, though they had to be paid for, left the country at home in the enjoyment of comparative peace. Parliaments were regularly called, and consulted on questions of foreign policy; and on the minor question of the actual local relations of their constituent parts it is to be noted that in 1331 prelates, earls, barons, and magnates deliberated apart (probably at one end of Westminster Hall). In 1332 prelates and proctors sat by themselves, and the earls and barons by themselves, though their resolutions were announced before the whole assembly; in the same year it was as before, with the additional fact that the knights sat by themselves; and in 1341 or 1343 the Lords and Commons finally occupied separate chambers, so that the prelates must by this time have definitely joined the Lords and the knights the Commons. That in voting they had ever intermingled before this date is unlikely, as in matters of taxation the proportions granted by the different estates were

usually different; though this can only be matter of conjecture, and there is no inherent impossibility in the taking of a general vote on matters not so peculiarly the concern of each separate estate. The history of their meetings is a long record of grants for the war with France, generously, almost lavishly, given, till in 1339 a spirit of caution and opposition appears once more. In this year we find the Lords asking for small reforms in their system of tenure, and the Commons suggesting that before further taxation there should be another election; and in the following year came a series of petitions from the Commons, some of which, after being referred to a committee of judges, prelates, barons, knights, citizens, and burgesses, were recast in the form of statutes. This is the primitive method of legislation with which the Commons began, and it was not usual to have the protection even of such a committee. The Commons petitioned and the king assented if he thought fit or was so much in need of money that he had no alternative; and there was no security that the statute would correspond with the petition, till the petitioners at a later date conceived the idea of drawing up their document in the form of a statute and demanding that it should be signed as it stood.

But while the Commons were exercising their new-found powers the Lords in 1341 enunciated a principle of considerable personal importance to themselves. A dispute arose between the king and John Stratford, Archbishop of Canterbury and Chancellor. The king

returning suddenly from France removed him from his chancellorship. Stratford retaliated with a series of sermons, which was followed by an exchange of violent letters addressed to the world in general. The times had grown comparatively mild, and the archbishop had the best of the literary encounter. The king then ordered him to appear before the Court of the Exchequer; the archbishop claimed to be tried in a full parliament of his peers, and, after a quarrel which fell short of the dignity to be expected in persons of such high rank, a committee of barons was appointed, which reported in words which are worth quoting in full as a good example of the official language of the time:

"Est avis as pieres de la terre, que tous les piers de la terre, officier ou autre, par cause de lour office, ne par nul autre cause, ne deivent estre menez en juggement, ne perdre lour temporaltez, terres, tenements biens ne chatelx, n'estre arestuz, ne emprisonez, outlagez ne forsjuggez ne ne deivent respoundre n'estre juggez, fors que en pleyn parlement et devant les piers ou le roi se fait partie."

This right of a peer to the judgment of his peers was but the letter and the spirit of Magna Carta applied with firmness to a particular instance; and the right has survived to the present day, though the necessity or reasonableness of it has long since passed away, as was forcibly illustrated by the proceedings on a recent trial for bigamy in the House of Lords.

At the next Parliament the Lords were occupied in

getting their newly asserted privilege expressed in statutory form and in demanding, with the Commons, a more complete control over the officers of state. A commission to audit their accounts and the appointment of the chancellor, great officers, and judges in Parliament were safeguards which, if secured, would have put the constitutional clock forward many years. Statutes carrying out these and other reforms were in fact passed; and the king having obtained his grants by signing them, forthwith proceeded to exercise the royal prerogative by revoking them all, with the naive explanation that he had only allowed them to pass in order not to cause confusion and the miscarriage of all his plans. The next Parliament acquiesced, but saved its rights by itself repealing the statutes, and sent up further demands that statutes duly passed should be respected, and that chancellors and justices should be chosen from among the peers and wise men. Nothing in particular happened. But the demands show that the king's claim was to choose his executive as he pleased: a claim which was as objectionable to the Lords as to the Commons, for the former found in it a serious challenge to their own rights as hereditary counsellors of the crown.

It was shortly after this that Edward crossed to France and proved to the world at Crécy (1346) that their own peculiar glory had departed from the heroes of mediæval chivalry. Whatever might be the failings of the feudal baron or knight in morals, intelligence,

or the arts of government, it had hitherto been an accepted axiom that at any rate in battle he was supreme. But now a small and wasted army of English bowmen and men of the ranks from Ireland and Wales found themselves faced by the flower of the chivalry of France. The Black Prince covered himself with glory, as the result of a piece of generalship on his father's part which did credit to his paternal pride but would have involved a modern commander in the risks of a court-martial. But it was the bowmen and footmen who won the day; and on hearing the news the humble retainers of great lords and the worthy burgesses of the towns must have realised for the first time that the arrow was mightier than the sword and lance. It is perhaps not too fanciful to suppose that Crécy and Poitiers had their effect upon the social and political relations of the proud baron and the lowly citizen engaged in agriculture and in trade.

The Commons were still careful not to take upon themselves responsibilities which would involve expense against which they would be estopped from protesting. We have seen them urging that the executive should be chosen from among the peers; and when, in 1348, the king consulted them about the war they displayed a still more cautious spirit of humility. Their reply illustrates admirably their conception of their own functions. "Most dreaded lord, as to your war and the equipment necessary for it, we are so ignorant and simple that we know not how, nor have the power, to devise. Where-

fore we pray your Grace to excuse us in this matter, and that it please you, with advice of the great and wise persons of your council, to ordain what seems best to you for the honour and profit of yourself and of your kingdom; and whatsoever shall be thus ordained by assent and agreement for you and your lords we readily assent to and will hold it firmly established." But while thus gracefully disclaiming all responsibility for the heroic exploits of their betters, they took good care of themselves by presenting sixty-four petitions for redress and obtaining, for what it was worth, a recognition of the principle that the answers should be enrolled and have the force of law. As a principle it was valuable; in practice, under a king with Edward's ideas of the nature of a promise, it was not worth very much.

The power which the Commons were thus willing to leave in the hands of the Lords and the Crown was exercised during this period freely, and at times extended in a manner which provoked frequent protests. The interest of the country in constitutional questions was thrown into the shade by the terrible plague which began in 1349, killed off an appalling number of the population, paralysed trade, and led to the first attempts at the statutory regulation of the relations between employers and employed. Acting in their capacity of counsellors of the Crown, the peers, or some of them, combined with the king and his ministers in the imposition of taxation without any reference to Parlia-

ment at all; and at times unusual changes were attempted to be made in the constitution of Parliament itself. The most curious phenomenon was the summoning of countesses and baronesses to a council in 1361 and 1362, not, it is true, in person, but by their proctors; but more dangerous was the precedent set in 1352, when one knight only from each shire was summoned, and one representative from a small number of selected boroughs. Equally small and selected was the number of boroughs in the following year, but they were allowed two members each. These do not seem to have been regarded as proper Parliaments; but there may perhaps be traced in them a desire on the part of the Lords to bring the Commons down to a number somewhat nearer to their own. For the barons were diminishing to a remarkable extent. Seven earls and forty-one barons only had been summoned to the Parliament of 1295, but seventy-four was the average number in the reign of Edward II, and it had now dropped to forty-three. There may also be observed signs of a desire to restrict the full Parliament to purely tax-voting functions, a position which the Commons in their humble confessions of ignorance of high statecraft seemed at times not unwilling to accept; but on the whole the Lords and Commons worked fairly well together, being united in opposition at one time to government by independent and irresponsible ministers, and at another to the excessive influence of the Church. In the Parliament of 1373, and in that of 1376, "deservedly called 'Good,'" the Commons, sitting, as was

now usual, apart, invited a committee of the Lords to come in and help them in their deliberations; and the Lords themselves were at this time divided, as was also usual, into two distinct parties, for and against the court. In the "Good Parliament" the demand for the audit of public accounts was repeated. The general complaint was the extortion and misgovernment of the king's ministers, much to the indignation of John of Gaunt, who wondered if these ignoble knights thought they were kings or princes in the land. But the Commons, with the assistance of the Black Prince and their supporters in the Lords, prevailed: they impeached and condemned two of the grossest offenders, Latimer and Lyons, and secured the removal of Alice Perrers, a mistress of the king. They followed up these vigorous proceedings by claiming to settle the succession to the crown, proposing an administrative council of peers on a familar basis, and presenting no fewer than one hundred and forty petitions, all of which good work was summarily made void by John of Gaunt in the following year with the assistance of a House of Commons packed with his supporters for the purpose. The most effective method of dealing with popular independence had now been discovered.

The attitude of the Lords during this important period, while the Commons were gradually consolidating their power, is not easy to define with precision. The reduction in their numbers had not tended to unanimity in their action. As the king's council they retained in

their own hands an executive power and at times a legislative power of considerable importance. Their executive power was threatened by the tendency of the king to govern by independent ministers and a more select body which developed into the Privy Council, and they required and often obtained the assistance of the Commons to help them in checking this abuse; while the exercise of the legislative power on the occasions when they assisted the king in arbitrary taxation or flagrant defiance of the laws tended to bring them into conflict with the Commons. But they were always divided among themselves, a strong party among them being on the king's side, and, as for the rest, they had as a rule more cause to act with the Commons than to act against them. Their own position had changed. From being in a vague way peers by tenure and by writ, they had now become peers by writ, and were summoned no longer "on their faith and homage," but "on their faith and allegiance"; though the question whether a peerage could be held by tenure with the characteristic of transferability to any person whom the holder chose was not finally set at rest till the Berkeley peerage case in 1861. There is also a further point of domestic interest to the House of Lords which must be noted before we leave the period of Edward III. Earls, who were barons of special magnitude, created by special formalities, sometimes in Parliament itself, had hitherto been the only example of degrees in the peerage, if we leave out of account the "greater" and the "lesser" barons.

Since the reign of Stephen new earls had derived their titles and honours from "letters patent" issued by the king. Edward III introduced further variety by creating his son, the Black Prince, a duke (1373) by patent; and John of Gaunt was raised to the same position, which is the highest the peerage has to offer. Marquesses, who come next in rank, did not begin till 1386, and we have to wait till Henry VI before a viscount appears, though in its Latin form (*vice-comes*) the name had been applied to the royal sheriffs. All these were created by patent, which had this advantage, that the exact order of succession could be limited and defined in the original grant; and its convenience led to its being adopted in 1387 for the creation of an ordinary baron, though it was not till the time of Henry VI that letters patent began to supplant the writ of summons as the baron's document of title.

CHAPTER IV

THE END OF THE MEDIÆVAL BARONS

The reign of Richard II began with the creation of four earls, and, the king being only eleven years of age, with a period of government by a council largely under the influence of the Duke of Lancaster, John of Gaunt. This further opportunity for the preponderance of the Peers was counterbalanced by a very determined insistence by the Commons upon their rights. Lords and Commons disagreed over the question of the appointment of those in attendance upon the king, but the Commons succeeded in getting promises, at any rate, of all they wanted, and at their request the Lords reheard the case of Alice Perrers, and once more condemned her to banishment. The unhappy woman no doubt deserved all the attention she received. Nominally her offence had been that to her own advantage she maintained and prosecuted other people's causes in the courts of law, from which it need not be assumed that she had anticipated a modern movement by appearing as a member of the bar. At a later Parliament, in 1378, a slight difference of opinion arose between the two

Houses, prompted, as is suggested, by John of Gaunt. The Commons being pressed for a subsidy, invited the Lords to send five or six peers to them to join in the discussion. The Lords averred that save in the last three Parliaments such a thing had never been heard of, and flatly refused; but the difficulty was solved by the appointment of a joint committee of both Houses, "to confer easily and without noise together." But all the hard fighting was now being done by the Commons single-handed, and the extravagant taxation caused by the continual state of war with France made hard fighting necessary. Grants of varying proportions on all possessions, increased subsidies on wool and merchandise, and graduated poll-taxes were regular incidents of these remorseless times; and the utter incompetence of everybody concerned to estimate what any given tax would produce led to repeated applications, recriminations, and accusations of extravagance and malversation. John of Gaunt was troublesome; but Richard being young and unacquainted with the nature of an oath (the passing of his youth made no material change in this), graciously assented to nearly everything that the Commons required. Faced with a peculiarly outrageous demand for £160,000 in 1379 (the amount can be roughly gauged in its relation to the present value of money by the fact that £50,000 supplied pay for the troops in Brittany for half a year), they invited the Lords to suggest a way of raising the sum. This was a somewhat unusual request, but the Lords responded by

suggesting among other things another poll-tax; and the Commons, soothed perhaps by the fact that they had lately succeeded in inducing the king to produce accounts, agreed. Incidentally we learn that the clergy were at this date believed to be the owners of one-third of the country.

This poll-tax was the cause of the first real uprising of the working classes as opposed to the freemen and smaller landholders. The ideas of men were developing rapidly. It was the transition period between villeinage and labour by free contract, in which the serfs bound to the soil were gradually gaining their freedom by the voluntary act of their lords or by escaping into the towns. The plague had reduced their numbers and taught them the value of their labour; combination even was not unknown. The Wycliffe preachers were perambulating the country, with unsettling doctrines disrespectful to transubstantiation, and heresies such as the equality of the poor and rich before God. Nothing so revolutionary had been heard since the time of the first Richard, when the turbulent Fitz Osbert had declared that taxation should be proportioned to the power to bear it, and been straightway hanged as a thinker in advance of his age. A multitude of causes contributed to the general discontent, and this poll-tax was the spark which produced the explosion. Round about London the grievances were mainly political, and the fury was directed against John of Gaunt; but the gallant young king had sufficient presence of mind

to repel the attack by a heavy fusillade of admirable promises. Wat Tyler fell in the *mêlée;* the rioters, after having killed a few important officials and sacked a few important buildings, went hoodwinked home, and the danger subsided as suddenly and as mysteriously as it had arisen. The promises were carried out by wholesale executions of the miserable peasants who had trusted to the royal word. All charters of manumission granted for the purpose of quelling the revolt were at once revoked; and Lords and Commons were unanimous in their declaration that the thing was well done, and that their serfs could not be freed without their consent; "which consent we have never given and never will give were we all to die in one day." This peasant revolt is a useful reminder that the freedom for which the Commons fought would nowadays be regarded as a close oligarchy of land and wealth. But it was the best kind of freedom that the age could produce.

After this there followed a period of war, continuous taxation, and occasional truces enlivened by quarrels among the lords at home. A new grade was added to the peerage by the creation of Robert de Vere Marquis of Dublin in 1386, and subsequently Duke of Ireland. More dukes had been created in 1385, and Michael de la Pole, one of the king's chief advisers, became Earl of Suffolk. The advance of de la Pole and de Vere roused the fierce enmity of the Lancaster party, one of the leaders of which was Henry of Derby, the son of John of Gaunt; and a bitter struggle followed, which led to

the impeachment of de la Pole and the demand for a continual council of regency, in which the opposition lords had the Commons heartily on their side. But Richard became defiant, obtained the opinions of his own judges in his own favour, to the effect that Parliament had no power to remove his servants, and the country was once more on the verge of civil war. Richard for a time gave in, and allowed his friends to be "appealed" of treason before the House of Lords in 1388. Five Lords Appellant conducted the prosecution in due form. The judges declared it all illegal; the Lords insisted that in the case of a crime of such magnitude Parliament was a law unto itself, and the king was compelled to agree. The archbishops and bishops withdrew, the Church law forbidding them to take part in a trial involving the punishment of death. The charges were many: they included "conspiring to rule the king for their own purposes," and "withdrawing him from the society of his magnates," impoverishing the crown by gifts, and trying to influence the sheriffs in the elections. That John of Gaunt had distinguished himself in this last respect did not prevent his own party from appreciating the enormity of the offence. All the accused were found guilty as a matter of course; and the judges were condemned with the rest of them, presumably for giving bad advice upon the law. The way of the lawyer was often hard. The revolting peasants had killed every member of the profession they met, and the House of Lords was proving

drastic in reversing legal decisions. The judges, however, were let off with exile to Ireland as a suitable place for legal gentlemen who have got into trouble; an archbishop and a bishop were with the Pope's assistance similarly banished; and every layman who could be found was hanged, or lost his head. The chief offenders, de Vere and de la Pole, escaped; but the Lords Appellant had overreached themselves. Heads had been removed with such a reckless brutality that a revulsion of popular feeling enabled the king to declare that he was no longer a ward, and to remove the whole of his enemies from the council with a word; and "all glorified God who in His forethought had given them so wise a king."

For a time Richard justified these glorifications. The appellants were pardoned by the intervention of John of Gaunt, who had during all these troublous times been out of the country. A long truce was arranged with France, and from 1388 to 1397 was a time of peace, harmony, and important legislation. Everybody seemed to forgive and be forgiven, with John of Gaunt, who had learnt wisdom since the peasant revolt, presiding as the spirit of conciliation. The change came suddenly in 1398. The first open manifestation was an attack in the Commons on the conduct of the king's household, which with his French wife had adopted French manners. The Lords were ordered to tell the Commons to mind their own business, and with complete subservience took the king's side. The trouble passed off, but it was

followed almost at once by a quarrel between the king and the Earl of Gloucester, one of the leaders of the Lords Appellant. In a Parliament packed with supporters of the court, the pardons granted to Gloucester, Arundel, and Warwick were revoked, and they were treated as they had treated others ten years before. Gloucester died before he was found; Arundel was beheaded; Warwick was sentenced to imprisonment for life; and the lords who had taken the king's part (some of them had originally been among or on the side of the Appellants) received promotion in the peerage. The occasion was celebrated by the creation of five new dukes, one marquis, and four earls. The question of the position of the bishops on capital trials had again been raised; and when retiring they appointed a proctor to act in their stead, as there was apparently some danger of their absence being used as an excuse for declaring the proceedings invalid. It is a comparatively small point, but it shows how already the idea had become firmly implanted that without all three estates the proceedings of Parliament were incomplete; and it also suggests that at this time at any rate bishops still sat as barons as well as by virtue of their spiritual office. Later, as we shall see, the suggestion that they are barons disappears.

Having enjoyed a full though long-deferred revenge, Richard proceeded to obtain from a subservient Parliament a complete reversal of everything which the Parliament of 1388 had done, a subsidy for him-

self for life and a permanent committee of twelve lords and six commoners, all his own friends and possessing powers which would have made parliamentary government a nullity and swept away all the constitutional results of the struggles of two hundred years. But he unwisely banished Henry, Duke of Hereford and son of John of Gaunt, who returning proved the rallying-point of all the smouldering hatred and disaffection which had been gathering during the reign, so that when Richard landed after a visit to Ireland, and found that even his regent the Duke of York had turned against him, he gave up the crown almost without a struggle, and one more attempt at absolute despotism had miserably failed.

Lords and Commons together deposed the king, and Lords and Commons put Henry IV in his place; and that fact was remembered, and vitally affected thenceforward the relations between the people and the crown. The sacred person of the sovereign had not been proof against an indictment which in form resembled the charges which could be and had been brought against mere ministers, and by the voluntary resignation of Richard judgment had gone by default. Further, in the appointment of Henry the strict hereditary principle had not been allowed to prevail; Parliament was exercising the old right of the Witan to choose the strongest and most suitable man for the position. Henry made some pretence of setting up a hereditary claim; but in all probability nobody was deceived.

Parliament had made him, and on Parliament he knew he had to depend.

The exact relations of the two Houses in these proceedings is not precisely ascertainable, but this stands out in the records of the time: that the Commons had concurred in deposing the king, but were unwilling to be parties to his condemnation to imprisonment, "as such judgments belong solely to the King and Lords." And in the answer to their request it is declared "that the Commons are Petitioners and Demanders and that the King and Lords, of all time, had had and ought to have, of right, the judgments in Parliament: save that, in a statute to be made or in Grants and Subsidies, or for the common profit of the Realm, the King will have their advice and assent: and this order shall be holden and kept in all time to come." But so far as taxation was concerned there are signs that the privilege of the Commons had gone a little further than this: the grant of a subsidy in 1399 "by assent of the Lords" shows a beginning of the recognition of the principle that the Commons initiate taxation; and it was but one step further, though it was some time before the step was taken, to the principle that in taxation the Lords have, beyond giving their consent, no concern. In the following year (1400) the Lords were summoned to a council alone, "to prevent the laying of any tax on the Commons," and agreed to raise forces at their own expense. In the course of the stern fight for great principles it is interesting to note that the Commons were ordered

to attend at eight A.M., while the Lords were allowed to saunter in at nine; and that on one occasion, it being the time of the harvest, Parliament was allowed to depart with leave to "solace themselves and disport at their pleasure," and that even on the later day so many were still disporting that another adjournment was required. We find the Commons continually requesting a few lords to come and help them in their discussions, but in 1407 at Gloucester there happened an important conflict between the two Houses which had important results. The king met the Lords and asked them what aid they thought necessary, and the Lords gave their opinion. Twelve members from the Commons were summoned to hear and report the result, and on their return the Commons uttered a strong protest, and the record tells us that "*after our lord the King had heard this, not willing that anything should be done at present or in time to come which might in any way turn against the liberty of the estate for which the Commons were come, nor against the liberties of the Lords, the King wills and grants and declares that it shall be lawful to the Lords to commune amongst themselves in that Parliament and in every other in time to come in absence of the King, of the state of the Realm and of the Remedy necessary for the same, and that in like manner it shall be lawful for the Commons on their part to commune together of the State and Remedy aforesaid, provided always that the Lords on their part and the Commons on their part shall not make any report to the King of any*

grant by the Commons granted and by the Lords assented to nor of the communications of the said grant, before the Lords and Commons be of one assent and accord, and then in manner and form as has been accustomed: that is, by the mouth of the Speaker of the Commons."

The words are worth quoting in full. They purport, as most of the important declarations in our constitutional history do, to crystallise the existing practice; but they are valuable as the first clear statement of the distinct and separate existence of the three branches of the legislature, King, Lords, and Commons; and they emphasise once more the rights of the Commons in the initiation of taxation.

Meanwhile the Commons were strengthening and regulating their own position in matters in which the Lords were less directly concerned. Again the Crown was continually in need of money, and there grew up a practice of deferring the grant till the end of the session, when it could be seen whether petitions had been satisfactorily answered. Much time and energy were spent on such things as the regulation of elections, the recording of statutes, the control of ministers, the support of the clergy in their insistent demands for the burning of Lollards, the settlement of the succession to the crown, and the expulsion of aliens, which is always a favourite occupation of minds in an elementary stage of development; and in everything they did the necessities of the king fought on their side. The crown sat uneasily upon his head. Rumours that Richard was still alive, and

the rival claim of young Edmund Mortimer to the throne kept the country for nine years in a fever of rebellion and disaffection. France and Scotland refused to recognise the new king's title, and Scotland and Wales united with the Northumberland Percies in a revolt which even the royal victory at Shrewsbury could not entirely quell. Beset on all sides and impoverished by the extravagance of his predecessor, Henry had little time or inclination to resist the demands of Parliament, and the Commons rose to a position of power and importance which they did not again attain for more than two hundred years.

The advantage was followed up in the succeeding reign; and in the second year of Henry V (1414), by the answer to a petition which for the first time in our history was drawn up in the English language, there was established the principle that "there never be no law made and engrossed as statute and law neither by addition nor by diminution by no manner of term or terms the which should change the sentence and the intent asked." It was a necessary precaution, in view of the ease with which clerks could, for the king's benefit, draft answers which, while purporting to be favourable, did not follow the terms of the petition and enrol them as statutes enacted at the Commons' request. But as a precaution it did not go far enough, and in the time of Henry VI Parliament adopted the plan of drawing the petition in the form of the answer, leaving nothing for the king to do but add his signature; so that in

substance legislation had now attained its modern form, and the question which was left as the bone of contention was the king's prerogative power of suspending and dispensing with laws at his will.

But in all this the House of Lords has dropped into the background, and its members are either engaged in revolting or meting out punishment in battle-field or in court to the king's enemies. We find them in 1405 interested in a quarrel about precedence between Warwick and Mowbray; a body of them in revolt in the north, supported by Scrope, the Archbishop of York, drew up in the same year an indictment against the king and a demand for excellent reforms which cost Scrope and Mowbray their heads and Henry a large part of his good name. They viewed with disapproval a comprehensive proposal reported to have been made by the knights of the shire in 1410, that all lands of bishops and religious corporations should be confiscated and used for the endowment of "fifteen earls, fifteen hundred knights, six thousand esquires, and a hundred hospitals"; and in 1415, on the eve of the embarkation of Henry V for the campaign which culminated in the victory of Agincourt, they were summoned to try Lord le Scrope of Masham, who, charged with complicity in a plot to put Mortimer on the throne, had demanded trial by his peers. But it was the bishops and the convocations who at home showed the most persistent and continuous activity during this period: it was they who had forced upon the country the statute "De

Heretico Comburendo," and in the burning of Lollards their energy was wonderful, from the day in 1401 when William Sawtre went to the stake to the pursuit, capture, and cruel death of Sir John Oldcastle in 1417, though the disappearance of that bold outlaw by no means marked the end of the persecution. No doubt the secular lords were deeply interested in this phase of the religious life of the country, for Wyclif and his daring followers preached doctrines disturbing to any peerage; yet their hearts were in France, the conquest of which was the crowning glory and the most indefensible piece of impudent aggression of Henry V's career. And the absence of so large a number of them made for peace and progress at home.

With the accession of the infant Henry VI there came a sudden change. The genius of Henry V and the excitement of his victories had kept the nobles in check, while leaving the Commons free to work out their own destiny. But when "the most Christian champion of the Church, the beam of prudence and example of righteousness, the invincible king, the flower and glory of all knighthood," had been struck down at the zenith of his career, the Lords raised their heads again and the Commons sank into a rapid decay. The government of the country fell into the hands of a council of prelates and peers; the Commons met to grant supplies, but the exclusiveness and the corruption of the boroughs, and the restriction of the county franchise, gradually reduced them to the position of a collection

of hangers on and retainers of the great families. Nominally they took part in the appointment of the council; but it was the Lords who, watching jealously over their own interests, settled the order of precedence between the Dukes of Bedford and Gloucester as Protectors of the kingdom, and provided carefully for the maintenance of their own authority. France had been suffering from their lawlessness and rapacity; now they turned their attention to matters nearer home, with disastrous results upon the country's fortunes and their own.

The chief difficulty which the members of the council and the Lords in general had to face was the difficulty of keeping the peace among themselves. A habit grew up of attending Parliament with enormous retinues fully armed. Occasionally there were protests. In 1423 the retainers of the Earl of March so alarmed even the council that they sent him to Ireland; and in 1426, arms being forbidden, bludgeons were brought in their stead. In the Parliament of 1425 we find a difference of opinion between the two Houses; or, in the words of a chronicler, "In that parlyment was moche altercacyon betwyne the lordys and the comyns for tonage and poundage." The quarrel seems to have been compromised by the Lords agreeing to a little retaliation upon aliens in return for the treatment of Englishmen in other lands; but the Bishop of Winchester as Chancellor failed to keep the agreement, whereat "there was moche hevynesse and trowbylle in theys londe." It was this

bishop, Henry Beaufort, who shared with Bedford and Gloucester the leadership of the Lords; and his quarrels with Gloucester kept Parliament and the country in a continual state of turmoil till, at the earnest request of the Commons, the Duke of Bedford and the whole House of Lords after a formal arbitration prevailed upon both to keep the peace. That Gloucester himself was not likely to be able to establish himself in anything like supreme power is shown by a remarkable answer made to him by the Lords in 1428, when he asked for a definition of his position. They told him n writing, bluntly, that he was bound by the terms on which he accepted the office of Protector; that he was to them merely the Duke of Gloucester, and they saw no reason why they should regard him as anything more, "we marvailing with all our hearts that, considering the open declaration of the authority and power belonging to my lord of Bedford, and to you in his absence and also to the king's council . . . that you should in anywise be stirred or moved not to content you therewith or to pretend you any other."

It is unnecessary to follow in detail the subsequent history of the quarrel between the duke and the bishop, which dragged its course along while Bedford was ravaging France and the Dauphin wept, till the miracle of the Maid of Orleans brought to nothing all that the military genius of Henry V had achieved, and ended the Hundred Years' War. It showed itself in

various ways both in Parliament and out; in 1432 the antagonists fought their battle before the Lords with indecisive results (except that the bishop agreed to lend the king £12,000, on hearing which the Commons were very pleased); it was complicated from time to time by quarrels between Gloucester and his brother Bedford, and Gloucester and the Earl of Suffolk; and it ended dramatically with Gloucester's arrest as he rode escorted by eighty horsemen to the Parliament of Bury St. Edmunds in 1447, and his sudden and mysterious death but six weeks before his great rival passed away. During the whole of it there was little or nothing that could be quoted as illustrating anything in the constitutional position of the Lords or Commons. The Commons met, abandoned their claim to nominate the council, and voted supplies with a subservient readiness—supplies drawn from a nation which was sinking deeper and deeper in the mire of destitution, maladministration, and despair, and yet could not bring itself to put an end in time to a hopeless and disastrous war, or to accept the peace with gratitude when it arrived. The Lords met, and heard their leaders hurling charges at each other, or expressing their anxiety for a harmony which never seemed to be attained. The king, young, scholarly and pious, but utterly helpless and bewildered, did his best, which was not very good; and save for the fact that the Lords secured by statute in 1442 that peeresses should be tried by their peers, and that the number of barons to

whom writs issued sometimes fell as low as sixteen, nineteen, and twenty-one, these twenty years or so are, from the point of view of the historian of the House of Lords, a blank.

Nor of the years that followed can anything much better be said. After the loss of Normandy the Commons impeached Suffolk, the one man who had done his best to break the nation's fall, and the Lords protested against the manner in which the king mitigated his punishment: and an inquiry by them in 1453, directed to the judges in the matter of an arrest and imprisonment of Thorpe, the Speaker, and another member of the House of Commons at the instance of the Duke of York, "certain of whose goods and chattels they had carried off," was answered very humbly by the judges, who had no doubt learned wisdom and declined to interfere in questions of the privileges of Parliament; "for it is so high and mighty in its nature that it may make Law, and that is Law, it may make no Law; and the determination and knowledge of that Privilege belongeth to the Lords of Parliament and not to the Justices." Thoroughly satisfied with this reply, the Lords left Thorpe in prison, "the Privilege of Parliament notwithstanding." We find, too, at about the same time the Commons petitioning and the king agreeing that archbishops and dukes be fined £100, bishops and earls 100 marks, and abbots and barons £40 for not attending to their duties in the House: an intrusion into the domestic affairs of the Lords which

may have done something to console the Commons for the treatment of Mr. Speaker Thorpe.

But the rebellion of Cade, with its significant complaint "that the Freedom of Election for Knights of the Shires hath been taken from the people by the great men, who send letters to their Tenants and Dependents to choose such men as the people approve not," soon showed the hopeless incapacity of the king when left to himself. The long struggle between the Bishop of Winchester and the Duke of Gloucester was succeeded by the far more dangerous struggle between the Duke of Somerset and Richard Duke of York. The real question now was the succession to the throne. York had the Commons and many Lords on his side against Somerset and the council, both professing the utmost loyalty to the king, who for his part went mad. The Lords ultimately chose York as the Protector, an office which he retained only until the king recovered and in effect dismissed him from his councils, an act which led to open war and the first great battle of the Wars of the Roses. At intervals for twenty years the nobles of the land were at each other's throats, paralysing their own power, and in an orgy of bloodshed ringing down the curtain on the drama of the Middle Ages. And while battles were lost and won, and futile truces were patched up, and a miserable, half-witted, helpless king saw himself and a young son rudely set aside, while his successor Edward IV was crushing out the still vigorous opposition of the Lancastrian party till the crowning horror of the Tewkes-

bury carnage (1471) extinguished their last hopes, the common people proceeded calmly on their way, ploughing their fields and busying themselves about their trade as if no death struggle were going on before their eyes. But meetings of Parliament meant little or nothing: in fact, in the reign of Edward IV it hardly met at all; and the only things to be noted are that in 1461, just before Henry VI was deposed, petitions were sent up in the form of statutes for the royal signature, and that Edward IV succeeded in obtaining what no king except Richard I had obtained—a grant for life which placed him practically beyond the reach of parliamentary interference. But it was not the Lower House which caused him any anxiety: "Kill the nobles and spare the commons!" was his battle cry. When Warwick, "the Last of the Barons," fell at Barnet, the Middle Ages, with their wild and lawless heroes of chivalry, were over. There were rumblings of past earthquakes in the eleven weeks' reign of the child Edward V, who with his brother was said to have been murdered in the Tower, and in the two years' reign of Richard III; and then the victory of Henry Tudor at Bosworth left a House of Commons which had been reduced almost to impotence face to face with the extravagant pretensions of the Tudor monarchy and a nobility shattered, broken, and almost powerless for good or evil.

CHAPTER V

THE TUDOR DESPOTISM

HENRY VII put forward a claim of hereditary right to the crown. The rights of Parliament were so far recognised that an Act was passed in the first year of his reign (1485) vesting the inheritance in him and his heirs; but by economies, confiscations, and extortions his predecessors had succeeded in amassing a fortune large enough to make him a monarch of comparatively independent means. Edward IV had invented the system of benevolences "from the more able sort" in the place of or in addition to the forced loans by which money had been extracted without actually consulting Parliament; Henry VII was not slow to avail himself of the invention, and obtained from Parliament a consent to this method of raising taxes which they had refused to Edward IV. We find Parliaments meeting, it is true: to the first came two dukes, nine earls, two viscounts, but only fifteen barons; and the number of barons summoned throughout the reign is painfully small, only once rising to twenty-six. The prelates of course were far more numerous, as they had almost always been in the

past; and other persons are also found in the House of Lords, including the judges, who were *ex officio* assessors or assistants in the king's councils, but never lords of Parliament. But in these Parliaments remarkably little appears to have been done; and the disorganisation caused by the Wars of the Roses made it easy for Henry to omit to summon any Parliament at all. Since the beginning of the fourteenth century annual meetings had become the rule. Between 1497 and 1510 only one was called, and that merely for the purpose of demanding aids. When statutes were passed, the form of petition or request had now disappeared; but with the king supreme the change in the form of legislation was long in producing practical results of any substantial value. The swords of the feudal barons, which had kept some sort of control over the king, had been struck down, and as yet there was nothing to take their place. Revolution had set up a new kind of kingship, and revolution alone could pull it down again.

The legislation of this reign, so far as the Lords were interested, was concerned in rounding off the consequences of the civil wars. Edward IV had passed a Statute of Liveries which aimed at the suppression of the swarms of retainers who surrounded feudal barons: Henry in 1497 tightened up the law and established a court to carry it out—a court in which are traced the beginnings of the Star Chamber which rose to an evil notoriety in later times. And the story of the Earl of Oxford illustrates the way in which the law was enforced.

The king called on the earl, and was received in state. Two rows of retainers lined his path. The earl was a devoted adherent, and on departing the king thanked him for his good cheer, but referred him to his attorney, who exacted a fine of ten thousand pounds.

A few unsuccessful risings in the course of the reign, spasmodic attempts by the supporters of the House of York to recover their position, still further depleted the ranks of the peerage and left the way clear for the establishment of the despotism of Henry VIII. The new reign began with a glow of hope. The young king was a scholar and a wit, of a temper "from which all excellent things might have been hoped." A new light was dawning upon religion and upon life. Columbus and Copernicus had opened up the possibilities of a new world and a new universe; men like Erasmus, Colet and More were spreading the new learning and bearing forward the standard of modern civilisation; and Henry himself was looked up to as a possible leader of the great movement. He was willing to ingratiate himself with the people, and the people gladly responded to his advances, particularly when they took the form of the execution of his father's most unpopular favourites. But the Lords stood aloof, sullen but impotent; and however kindly might be the king's disposition at first towards the nation, he had no intention of admitting it to a greater share of the government of the country than he could help. The meetings of Parliament were few, but certain points are to be noted illustrating the

relations between the Houses. In 1512 we read of a discussion in the Lords on the intended war with France, followed by a visit of the Lord Chancellor, the Treasurer, and other peers to the Commons, "to acquaint them with these matters"; and in 1515 the Lord Chancellor again "goes down to the Commons House—exhorting them diligently to consider the king's necessary expences," so that the sanctity of the House of Commons and the members' right to conduct their own debates among themselves had by no means received full recognition. In this same year (1515) a committee of both Houses is appointed to discuss affairs, an expedient which, as we have seen, had become customary, and may, as is suggested, have been a method of settling differences. A bill relating to the service due to the king by those who hold lands in fee is passed by the Lords and sent down to the Commons, but apparently rejected; and a bill brought into the Lords concerning a subsidy is carried by the Lord Chancellor to the Commons, which looks like a serious denial of the right claimed by the Commons in more independent days to initiate financial legislation. A protest is indeed recorded in 1523 against Wolsey's appearance in state in the Lower House to demand a supply. The demand was for £800,000, involving a tax of 20 per cent. on lands and goods, and it led to vigorous opposition—an opposition both to the amount of the grant and to the intimidation resorted to to get it. Twice Wolsey came in state, and all his eloquence was received in

chilling silence, followed by a humble protest against this interference with the Commons' rights. After a long debate, during which the king threatened to behead a member who offered opposition, a smaller subsidy was granted than was asked; and for this show of independence Parliament was punished by not being summoned for nearly seven years. In 1534 the fact that a whole day of the Lords' time was taken up with reading the "proxies" of absent members of the House shows the extent to which it was considered desirable to avoid personal attendance and the prevalence of a custom of long standing which allowed peers to attend and vote by sending representatives, a custom which arose from the necessity of binding them all by the acts of those who did attend, which in time became a valued privilege, and was only ended by a resolution of the Lords themselves in 1868. The Commons also regarded attendance as an irksome and expensive duty, in spite of the wages they received.

The legislation of this reign was fairly abundant and passed in due form, for Henry had a great respect for the letter of the law and the Constitution, and allowed Parliament to perform its proper functions so long as they were performed entirely in accordance with his will. Nor had he any reason to complain; and he could write to the Pope with an air of exalted rectitude that "the discussions in the English Parliament are free and unrestricted: the Crown has no power to limit their debates, or to control the votes of their members."

No more serious pressure was necessary, as we have seen, than a threat to cut off a member's head. The practical results of this "freedom of discussion" are observed in a wide extension of the law of treason, statutory releases of the royal debts, an Act giving the king's proclamations the force of law, and a complete and servile acquiescence in all the king's measures which revolutionised the Church and for the first time reduced the spiritual peerage to a permanent minority in the House of Lords. After the dissolution of the monasteries in 1539 only twenty spiritual peers attended, though subsequently six new bishoprics were created in this reign.

Henry sadly disappointed the hopes entertained of him at the beginning of his career. He developed into a bloodthirsty tyrant; but his careful preservation of the outward forms of parliamentary government and his popularity with the masses disarmed opposition and enabled him to hand on to his successors the despotism which he had established. Of the nobility many were new men, and many owed promotion to the king's favour: they were no longer warriors in arms, and their number was so small that it was not difficult to satisfy all who mattered with places in the Government, and to ignore the rest. The barons who attended the meetings of Parliament ranged from eighteen to thirty-two, to whom must be added some dozen or fifteen dukes, marquesses, earls, and viscounts; though Henry by the end of his reign had created new peers, or raised peers in rank, to the number of sixty-six. The reigns

of Edward VI, Mary, and Elizabeth show but a slight increase in those attending the House of Lords. That the new creations did little but make up the wastage is proved by the fact that only once during the Tudor period were there as many as sixty temporal peers in existence; and the reduction in the spiritual peers already mentioned, and the transformation of the bishops into mere nominees of the king, left the House of Lords a mere shadow of its former self.

In this little band one would not look for traces of independence, and if one did, no such traces would be found. Occasionally there is a slight collision with the Commons on a matter of privilege. A commoner in 1554 served a subpœna on an earl, and the Commons told the judges who were sent down by the Lords to protest, that no breach of privilege had taken place; but nothing further appears to have been done. In the same year a bill was sent from the Commons to the Lords, for the punishment of absent members of the Commons; in connection no doubt with the fact that thirty-three members of the House "walked out" as a protest against the subservience of the majority to the Crown's ministers, and were indicted for their contumacy. Six were fined, but the queen's death saved the rest. On the matter of privilege, the Lords had their revenge in the following year, when a protest was made to them by the Commons against the binding over of a member to appear before the council, and the judges, on the matter being referred to them, declared that no breach

of privilege had been committed. But the Commons were awaking again to their powers, and several times rejected bills; and in the last days of Mary's reign the Lords joined with the Crown in a vigorous attempt at coercion. The queen sent for the Speaker, and bade him lay before the Commons the necessities of the nation. The Commons debated, but did nothing. Then came the Lord Chancellor with other Lords down to the Lower House, and occupied the places appointed for Privy Councillors; and the Speaker left the chair and sat below. In spite of this, the Commons did nothing but debate, and the struggle was ended by the announcement of the death of the queen.

It was not only in matters of taxation that the Commons had been showing spirit. Their influence, however, was easily undermined by the creation of "rotten boroughs," and gross interference by the Crown and Council in county elections. But the extreme violence with which the Roman Catholicism of Mary countered the violence of the Protestant Reformation roused both Houses for a time to effective resistance. They refused to change the succession to the crown in favour of Philip of Spain; they refused to agree to the restoration of Church lands to the clergy; they refused to restore the jurisdiction of the bishops against heretics · and in the general rejoicings which hailed the accession of Elizabeth their action proved to have been justified, and brought back to them some part of their former dignity.

But of constitutional advance Elizabeth's reign was almost as void as the reigns that had gone before. Religious questions were of the first interest, and within a few months of her accession Parliament had (the bishops strongly dissenting) restored to the Crown the position of the Supreme Head of the Church, imposed the oath of supremacy and allegiance on all holders of office, and by the Act of Uniformity (1559) confirmed the Revised Book of Common Prayer, enforced the use of the established liturgy, and ordered all men to church on Sundays under a penalty of one shilling to the poor. The Lords (or some of them) and the bishops struggled in vain ; and the oath of supremacy caused vacancies in fifteen sees in addition to the ten which had been vacant on the queen's accession, and resulted, in fact, in the reconstitution of the whole episcopal body. The lords temporal prevailed, however, to this extent, that in a statute of 1562 they secured for themselves an exemption from this oath at a time when it was imposed on every member of the Commons. But it was, in fact, upon the Commons that the blind persecution which was one of the chief articles of all religious creeds of the day produced the most important effects. For though persecution of Roman Catholics was made inevitable by frequent attempts to restore the old order (and with this persecution the Commons were heartily in accord), yet there was proceeding simultaneously a stern suppression of Protestant nonconformity. Upon the Commons the Puritan spirit soon obtained a powerful hold, and it was

from among the Puritans that there arose later some of the most daring champions of popular rights. Roman Catholics were now a helpless minority, doomed to wait for the religious tolerance of a more civilised age; the Puritan element waxed stronger year by year, and ultimately swept both Monarchy and Lords for a time away. For the present, however, respect for the queen and a knowledge of the danger of the Church and country kept Parliament subservient, and it was only towards the end of the reign, when that danger seemed at an end, that the storm broke.

The historian of Elizabeth is chiefly engaged with the gross illegality of the courts, and in particular of the Courts of High Commission and of the Star Chamber, the dangers to the liberty of the subject, and the extravagant claims of the Crown to govern by proclamation, which were in part made possible by the comparative rareness of applications for money. But there are a few points to be noted even in the irregular and infrequent meetings of Parliament which illustrate the relations of the two Houses. In the Parliament of 1559 the Lords amended bills granting a subsidy, and the Commons accepted the amendments, which shows that the financial supremacy of the Commons was still in its infancy. In 1566 the Commons, on the death of their Speaker, consulted the Lords as to what they were to do; and the queen hearing of it, gave the obvious advice that they should go back and elect a new one. A petition from both Houses (1571) praying

the queen to marry led to a violent altercation between Parliament and the Crown, accompanied by daring language from both peers and commoners. Her marriage and the succession were subjects on which the queen violently resented interference, and that not merely from any sense of delicacy. The offending peers were in disgrace at court till they submitted; the Commons were ordered to discuss the matter no more. Paul Wentworth, a Puritan member, declared this command to be a breach of privilege, and after a long and heated debate the queen revoked her order, "which revocation was taken by the House most joyfully with hearty prayer and thanks for the same." A like dispute took place over the claim of the Commons to interfere with ecclesiastical legislation, with much the same result, save that the struggle was continued at intervals for the greater part of the reign. But the queen was displeased at the Commons for busying themselves with matters "which did not appertain at this time," and there was no Parliament for over four years. In 1571 the Lords sent down a message asking the Commons to proceed at once with public bills and lay private bills aside, "as the weather waxed very hot and dangerous for sickness," and that the queen was still displeased is shown by her final address: "She utterly disallows and condemns those for their audacious, arrogant, and presumptuous folly who, by superfluous speeches, spend much time in meddling with matters neither pertaining to them nor within the capacity of their understanding." A joint

committee of both Houses met in the Star Chamber in 1572 to discuss the Queen of Scots; and the Lords dealt with another case of breach of their own privilege against arrest. In 1576 one Peter Wentworth (supposed to be the brother of Paul) became so bold in his claim for freedom of speech that the Commons themselves were alarmed, and put him under arrest; and the points were settled that the eldest son and heir of a peer is entitled to sit in the Lower House, and that the fact of being a barrister and pleading before the House of Lords is not a disqualification for a seat in the Commons. In 1581 the Lords sent down a bill "for fortifying the Borders towards Scotland"; but the Commons disliked it so much that they sent back a new bill on the same subject, which was ultimately passed with amendments, but not without a protest from the Lords that such a procedure was "derogatory to the Superiority of the Place, and contrary to the Ancient Course of both Houses." In 1584 the Lords again made an alteration in a money bill, and in 1586 both Houses were unanimous in demanding the execution of Mary Queen of Scots. In 1587 Mr. Peter Wentworth went again to prison at the order of a subservient House, and for the second time the Lords protested against the action of the Commons in rejecting a bill and sending up another of their own. This time they made their protest more effective by refusing to pass the Commons' bill at all. The two Houses held a conference in 1589 to deal with an indignant message from the queen, who objected to

certain bills, and the bills were for the present dropped, but subsequently passed into law. In 1592 a resolution was passed by the Lords denying to the bishops the status of peers, a matter to which attention was given in 1624 and 1661. In 1593 the queen repeated her strong objection to "vain orations full of verbosity and of vain ostentations," and defined the privilege of free speech as being the privilege to say Ay or No; which resulted in an outburst and more imprisonments, in which Mr. Peter Wentworth shone once again. But this year is chiefly remarkable for an encroachment by the Lords upon the right of the Commons to originate money bills. The Lords desired to grant three subsidies; the Commons would only grant two. The Lords desired a conference, and Mr. Francis Bacon, as yet comparatively unknown to fame, but possibly acquainted with Shakespeare, made a speech. He did not like the idea of joining with the Upper House in this grant; "*for the custom and privilege of this House hath always been first to make an offer of the subsidies from hence, then to the Upper House; except it were that they present a bill to this House with desire of our assent thereto, and then to send it up again. And reason it is that we should stand upon our privilege, seeing the burthen resteth upon us as the greatest number, nor is it reason the thanks should be theirs. In joining with them in this motion, we shall derogate from ours; for the thanks will be theirs and the blame ours, they being the first movers. I wish we should proceed, as heretofore, apart by ourselves and*

not join with their Lordships." This is the first clear statement of the principle which had long been in men's minds, and it was clear enough to secure for the rejection of the Lords' proposal a majority of 217 to 128.

In 1601 the Lords deal with other cases of breach of the privilege of freedom from arrest, and commit an Under Sheriff and the keeper of Newgate Prison to the Fleet. In fact, the time spent on such matters brought a reproach from the queen, who was always anxious that her faithful Parliament should get on with its work; and her messages throughout give us an interesting glimpse into the mind of a tyrannical and rather peevish old lady talking to a group of recalcitrant schoolboys. With the great defeat that the Commons inflicted upon her in the case of monopolies, or exclusive licences to trade, the Lords had little or nothing to do. It was the result of a popular outburst of long pent-up indignation at a gross abuse of the prerogative; and we may perhaps believe the queen when, in revoking all her grants to the favoured few, she professed never to have realised the enormous injury done to the unhappy consumer.

It is thus clear that, though seldom meeting, Parliament was in a quiet way keeping the skeleton of its constitution intact and ready to be clothed with flesh and blood when the hour and the men should arrive, and was not even in Elizabeth's time entirely without men who could set precedents for future guidance.

England had vastly changed. Education and knowledge had spread, and the country was passing through an era of literary glory the like of which had never been known before. Explorers were opening up the ends of the earth, and trade and commerce were advancing by leaps and bounds. Above all, behind the ordinary motives which prompt men to political change, the burden of oppression, extortion, and incompetent government, there was now the driving power of a new religion, which, whatever its defects, inspired a child-like faith, a fierce sincerity, and a defiant recklessness in upholding the cause of popular liberty. The destruction of the Armada had freed Great Britain from the last danger from abroad, and the country was rapidly consolidating itself into one nation. Wales had been wholly incorporated, and sent its members to Parliament; the accession of James I. brought Scotland and England together; a marked advance had been made in the task of conquering Ireland. The restraint imposed by the personal influence of Elizabeth was ended by her death. It needed but an utterly vicious and incompetent king, putting forward extravagant claims to divine right, to prove that the temper of the nation had entirely changed. The House of Stuart had no difficulty in providing such a king.

CHAPTER VI

FROM JAMES I TO THE ABOLITION OF THE HOUSE OF LORDS

With the accession of James I the long period of subservience was over. The Commons had only been awaiting Elizabeth's death. In her successor they found a man who had no such claim as the old queen had upon their loyalty, who owed his position to the will of Parliament, and yet had advanced definitely for the first time the theory of the divine right of kings. With the long struggle against these pretensions we are not directly concerned. The House of Lords had gone into the background after the Wars of the Roses, and in the background it still remained. In the determined attack upon purveyance and monopolies, in the great fight over the customs duties which the king claimed to be entitled to impose or vary at will without even sugaring the pill with the soothing theory that the foreigner paid the tax; in the protests against proclamations, the Court of High Commission, benevolences, and arbitrary imprisonments; in the revival of the right of impeachment at the bar of the Lords which laid low

holders of monopolies, corrupt judges, and Lord Chancellor Bacon, the Commons held the centre of the stage while the Lords looked on, sometimes giving their support, sometimes taking the king's side, and always viewing with a vague suspicion this new force which was establishing itself gradually as the sovereign power in the state.

To James's first Parliament in 1604 came the Keeper of the Great Seal, the Lord High Treasurer, twenty-one other earls, one marquis, two viscounts, fifty-two barons, and four hundred and sixty-seven members of the Commons; and for the rest of the reign, save for one drop to twenty-seven, the barons remain in the neighbourhood of fifty. James's policy towards the peerage is marked by the creation of peers at £10,000 a head, and the foundation of that order of baronets who, having "ceased to be gentlemen, but not yet become noblemen," paid £1000 each for the privilege—a method of raising money which, as everybody knows, stamps his reign with a very special brand of iniquity.

The king's first message to his Parliament contained a warning to the Lords not to spend quite so much time over the discussion of their own privilege of freedom from arrest, to which they attended by desiring to interfere in a question of the due election of a member of the Commons, which interference the Commons flatly refused to allow. The Lower House gave way to the king to the extent of agreeing to a conference with the judges; but it was of course at this

time of enormous importance to the Commons to retain in their own hands full control of their own constitution, though ultimately the undesirability of making election disputes party matters led to the present system of bringing them within the jurisdiction of the courts of law. In 1605, on November 5, a determined effort to abolish the House of Lords for a time was foiled by the discovery of thirty-six barrels of gunpowder in a vault before they went off; and four days later the king lectured the Houses, as Elizabeth had continually done before, on the evils of too much legislation, and sighed for the days of the Lacedæmonians, among whom "whosoever came to propose a new law to the people, behoved publicly to present himself with a rope about his neck, and in case the law were not allowed he should be hanged therewith." In the following year an important question of procedure was settled. The Lords had rejected a bill dealing with the question of purveyance, and the Commons sent up practically the same bill in the same session. This also the Lords rejected, and it was ordered "that when a bill hath been brought in the House, proceeded withal and rejected, another bill of the same argument and matter may not be renewed and begun again in the same session and in the same house where the former bill was begun"; and in this rule the Commons seem to have acquiesced. In 1607 the Lords thought it necessary to enter an apologetic caution against any commoner claiming the title of a baron of Parlia-

ment, as appears to have been done by certain members from the Cinque Ports, and also against the use of the term "Court of Parliament" as applied to the Commons alone. In 1610 a conference of the two Houses was arranged to discuss certain extravagant claims for the royal prerogative put forward by one Dr. Cowell in a book called "The Interpreter"; but before the conference met the king, through the Lords, signified his disapproval of the book. The rule, too, was established about this time that more than one speech could be made in committee, and we find the Lords engaged in such matters of hygiene as granting special permission to the Bishop of Llandaff to attend, on his statement that all his house were now free of the plague. The question of tenures too is discussed, for it was the time of the "Great Contract" with the king by which tenure in knight's service and purveyance were to be abolished and the king allowed £200,000 a year in their place. For the present this came to nothing, and the Lords looked upon such proposals with an anxious eye. For three years after this there was no Parliament, but all other methods of raising money (which included baronetcies and a state lottery) failed, and the Parliament of 1614 collapsed early owing to an attempt, which was hotly resented, to form a "king's party" in the Commons. The Lords refused to confer with the Commons on the question of "impositions," or customs duties, and the judges declined to give an opinion on either side; and the Commons succeeded in

forcing an apology from the Bishop of Lincoln for speaking of them in terms of violence. The Parliament was dissolved without having passed a single bill, and did not meet again for seven years, and four of its members were sent to the Tower. There followed six years of forced loans and monopolies far in excess of anything Elizabeth had done; and the offer of a "benevolence" by the peers led to an attempt to exact a general benevolence which raised fierce opposition throughout the country.

In the Parliament of 1621 a conference of forty peers and eighty commoners was appointed to discuss measures against the Jesuits; and later in the same year, when the Commons had taken upon themselves to punish one Floyd, a Roman Catholic barrister, with fine, pillory, and public degradation, the Lords considered their own privilege infringed by this exercise of a judicial power which properly belonged to themselves. There was a long debate, and the Lords passed several resolutions to the effect that the Commons have no jurisdiction over a man not a member in a matter which does not concern them; and the Commons being in the wrong gracefully gave way, and admitted that they had acted in excess of zeal. The Lords dealt sternly with the Earl of Berkshire, who had "pushed or thrust" Lord Scrope "forcibly into the House, against the dignity of it"; and also asserted before the king their privilege to protest upon their honour instead of being put on their oath. It was also, on the motion of

the Prince of Wales, decided that no lord is to speak twice but only to explain himself; from which we see that Charles was preparing himself for future greatness in the curtailment of discussion by proposing a rule which has ever since been admitted to be highly reasonable. But the most important business of the session was the series of impeachments at the instigation of the Commons, the Commons at the end of each going up to the House of Lords and demanding judgment after some discussion as to the proper form to be followed. The chief victims in what was substantially an attack upon the king and court were Sir Giles Mompesson and Sir Francis Mitchell, whose offence was fraud and oppression in the exercise of monopolies of the manufacture of gold and silver thread, and the licensing of alehouses; and a judge, a bishop, and Lord Chancellor Bacon for bribery and corruption. This Parliament ended with a solemn protestation by the Commons setting out their rights, which the king in an outburst of passion tore out from the journal. His conduct had by this time roused a minority of the peers themselves to a definite opposition to the court; on the Commons these twenty years of attempts at arbitrary despotism could have only one effect. The claim of royalty to something like divinity on earth had gone hand in hand with a moral corruption and hopeless incompetency of the court which stiffened the Puritan sinews of the people to the struggle which had now become inevitable. James had taken the first step towards the establishment of con-

stitutional monarchy on modern lines, and he could not have found an apter pupil than Charles to complete the task.

The usual rejoicings took place on Charles's accession; once more was there a "triumph of hope over experience." But the struggle was in no way abated. Parliaments were called and hastily dissolved; members were dragged to prison; taxation was imposed with gross illegality in the old familiar way. The only difference was that Charles was younger and more hot-headed, more deeply imbued with the theory of divine right than his father, and had behind him a section of the Church and of the aristocracy who had made divine right a part of their religious creed. And the higher its pretensions the worse became the morals of the court. When the king was absolutely driven to it he summoned Parliaments, but between 1629 and 1640 there was no Parliament at all. The first met in 1624, for money was needed for a war with Spain. But it proved obstinate. It gave the king tonnage and poundage for a year only, instead of for life; and the Lords, taking the king's part, refused to pass the bill. The Upper House also occupied themselves with questions of privilege, the position of the bishops (who "are only lords of Parliament but not peers," a declaration which, like the similar resolution of 1592, suggests that all questions as to their holding by virtue of temporal baronies had become ancient history), and the fining of their own members for absence; indeed, on one occasion

"the king notices the thinness of the House of Lords;" and they seem to be developing nineteenth and twentieth century habits, though possibly the prevalence of the plague was their excuse. But as the Commons were slow over the matter of supply, and preferred to discuss in a threatening manner the conduct of the king's favourite, Buckingham, this Parliament was dissolved in anger. It is worth noting that London was not yet fixed as the permanent meeting-place: for the first half of the time they sat at Westminster, but then adjourned to the hall of Christ Church, Oxford. In 1626 tempers were no cooler. Buckingham was still the object of attack, and Charles was insolent. The favourite was impeached; members were hurried to prison, and a violent quarrel was only calmed a little by the intervention of several of the peers. Charles even allowed himself to come into collision with the Lords by committing the Earl of Arundel to the Tower for allowing his son to marry a lady of royal blood, and by refusing a writ of summons to the Earl of Bristol. Both peers were enemies of Buckingham; in both cases the Lords protested, and in the former the offender was after a long dispute released, while in the latter the writ was ultimately sent, with a threat that the consequences of attending would be serious. Bristol was, in fact, charged with high treason, and retaliated by impeaching Buckingham on his own account; but the whole thing was put an end to by a second sudden dissolution. It was clear that the king could not trust even the House

of Lords, for the dissolution was directly against their wishes.

The next Parliament met in 1628. In the interval there had been extensive imprisonments all over the country, and the Commons again insisted on postponing supply and discussing the liberty of the subject. They applied to the Lords for a conference, and after voting something on account, spent the greater part of two months in argument. The Lords had first made proposals in the form of short propositions of a general kind approving of Magna Carta, the liberty of the subject, and the supremacy of the Common Law; to all which the king agreed, desiring both Houses to rely on his royal word. The Commons liked not the security, and drew up the Petition of Right "according to ancient precedents as a more Parliamentary way." On this the Lords desired a conference, stating that they wished only to modify a few phrases which might offend the king; and they added a clause containing a provision "to leave entire that Sovereign Power wherewith Your Majesty is trusted for the protection, safety, and happiness of the people." This the Commons declined to entertain, and the Petition, after further conferences, was sent up in its original form to the king, who after some equivocation was prevailed upon to accept it, the judges having not obscurely hinted that so far as they were concerned it would make no difference to his power of imprisoning whom he pleased.

With the terms of this famous declaration against

illegal taxation, arbitrary imprisonment, and the abuse of martial law we are not immediately concerned; but it is interesting to observe the House of Lords acting as a buffer between Crown and Commons, avowing its sympathy with the latter while striving in vain on behalf of the former to introduce a clause which would have given Charles at any rate some technical excuse for the flagrant faithlessness of his subsequent behaviour. Nor does this attitude require any explanation when it is remembered that of the ninety temporal peers in existence at the beginning of this reign a large number had obtained their peerages from James by purchase, and Charles had been steadily creating peers since he came to the throne. It is only fair to mention, however, that in spite of all these discussions the relations between the two Houses seem to have been excellent; for the Commons sent a message to the Lords "to render their most hearty thanks for their noble and happy concurrence all this Parliament, and they acknowledge that they have not only dealt nobly with them in words, but also in deeds." When the "theys" and "thems" in this are disentangled it will be found to be a handsome tribute to the conduct of the Lords during a trying time; and a subsequent dispute due to the fact that a subsidy was expressed to be granted by the Commons alone was settled in a most amicable way.

When the Parliament next met Buckingham had been assassinated; but the Commons found enough

to quarrel about in the fact that it soon became obvious that the Petition of Right was not to make the slightest difference. The religious question, too, was becoming acute, and the famous scenes occurred in which the Speaker, in tears, on attempting to carry out the king's command to adjourn was held down by force in the chair, and the king in wrath dissolved the Parliament and called no other for eleven years. So far as the Lords were concerned, the only things of note were the large number of new peers introduced and a protest against the precedence claimed by Englishmen who had obtained foreign (that is, Scotch and Irish peerages); but nothing was done in the matter.

For eleven years the main object of government was the acquisition of money. Every method was employed, from an extravagant insistence upon those feudal rights whose existence had been already threatened to a gross abuse of the judicial powers of the king's council in the Star Chamber. Monopolies flourished as never before, and controlled almost every article of consumption in the kingdom. The Petition of Right went the way of every promise that Charles had ever made. Two names stand out: Wentworth, the popular hero of the Petition of Right, who deserted the cause and as Earl of Strafford became the main support of despotic tyranny; and John Hampden, whose resistance to ship-money roused the country in a way that the savage punishment of all who spoke a word against the existing order failed to do. But the country as a whole

enjoyed peace, and with peace increase of prosperity; it was only the outbreak of the Covenanters in Scotland which drove Charles back to his hated Parliaments.

The first meeting of the "Short Parliament" in 1640 (to which were summoned no fewer than fifty-nine earls, one marquis, five viscounts, and forty-five barons) soon revealed a change in the spirit of the Lords. The Commons promptly took up the threads of the story where they had been dropped eleven years before; but though they behaved with considerable moderation, they found the other House supporting the king in his demand for supply before grievances. When this was reported to them they declared it at once a breach of privilege. There followed a conference, and the Lords declared it was nothing of the kind. They modified this next day into "it was no breach of the privilege of the House of Commons for their Lordships to hear what His Majesty declared to them, and thereupon to report the same to the House of Commons." The matter was settled by the Lords admitting to the full the Commons' rights to initiate money bills. So far as the king was concerned the Commons remained obdurate; and Charles once more lost patience and dismissed them at the end of three weeks, keeping, as usual, several in prison, much to the disgust of the whole nation.

That was in May. By the month of September Charles had most opportunely been defeated by the Scots. He summoned the peers alone at York. They did nothing, but they could not be trusted to support

him in dispensing with his Parliament, and in November 1640 the "Long Parliament" began its chequered and epoch-making career. The Short Parliament had tried moderation; it was now thought to be the time for something else. Men like Pym and Hampden took the lead. At the Commons' request the Lords promptly put Strafford under arrest. The trial began in the following year, with the whole of the House of Commons appearing against the renegade and tyrant. But strict proof of treason was lacking: the prisoner had devised evil to the nation, not to the king. The trial was abandoned, and the Commons resorted to a bill of attainder, much against the wish of Pym and Hampden, for this was an expedient too reminiscent of the Tudor period to be to their liking. While the crowd surrounded the building calling for the victim's death, the Lords by a small majority in a small house (only forty-five were present) passed the bill. The king hesitated, till Strafford wrote to him, "I do most humbly beseech your Majesty, in prevention of mistakes which may happen by your refusal, to pass this bill, and by this to remove (praised be God, I cannot say this accursed, but I confess) this unfortunate thing forth out of the way towards that blessed agreement which God I trust will ever establish between you and your subjects. Sir, my consent shall more acquit you herein to God than all the world can do besides." So Charles signed, and Strafford, amidst general rejoicings, made a noble end.

The behaviour of the Lords throughout shows them

still on the Commons' side; but Strafford had probably been as unpopular with his peers as with his victims, which may account for much. His execution was at best an act of doubtful legality, justifiable in a general way by the argument that the man had been more dangerous than many whom the king had put to death as traitors: at the worst it was an outburst of passion and fear.

For the rest, we find the Commons passing resolutions declaring invalid everything of which they had cause for complaint, and releasing all the victims of the Strafford tyranny. Triennial Parliaments were established, with provision for the issue of the necessary writs if the king made default, and also with provision against summary prorogation, adjournment, or dissolution. Tonnage and poundage were granted for a short period, but the claim of the king to impose duties without consent of Parliament was declared invalid, and ship-money was declared illegal. The Courts of Star Chamber and High Commission were abolished. For present protection against the king an Act was passed providing that the existing Parliament should not be prorogued or dissolved without its own consent; and the bishops were deprived of their seats in the House of Lords. Nearly all these measures passed the House of Lords without difficulty, though with occasional amendments; in fact, the resolutions and acts of the Lords of this period are almost as uncompromising as anything to be found in the records of the Commons. The most startling change, of course, was the exclusion of the bishops, and this was

not effected without considerable difficulty. It was part of a general and comprehensive attack upon the Church, which had incurred wrath by preaching passive obedience. The Lords objected several times, and the Commons supported their measure with a reason which sounds curious to modern ears: "Because the Bishops hold their situations but for their lives, therefore they are not fit to have legislative power over the honours, inheritances, persons, and liberties of others." Even in the Commons there arose a marked difference of opinion on the subject: and the object was only achieved after one bill had been thrown out by the Lords, a second had been dropped, and a third had been passed after a long struggle even in the Commons. An interesting point in peerage law was touched upon by a resolution declaring that "No Peer of this realm can drown or extinguish his honour, but that it descend to his descendants, neither by surrender, grant, fine, or any other conveyance to the King," by which was meant that a peerage, though it is real property, cannot like land be surrendered to the Crown or transferred. The Lords also inspired respect by passing a resolution of more general interest "that both Houses may petition His Majesty that titles of honour may not be bought and sold for money, but that they may be conferred, as anciently, for virtue or merit." The Commons made a strong protest against the interference of peers in elections, and objected to the raising of one of their members to the peerage without their consent: and a good

deal of time was spent in showing their determination not to have any of their proceedings reported.

But all these vigorous things could not be done without raising up a conservative party anxious to put on the brake, and in both Lords and Commons such a party soon appeared. Charles had been alternating fits of violence with fits of helpless acquiescence. The culminating-point was reached with the passing of the Grand Remonstrance and the attempt to arrest the five members, and when the Commons put forward their claim to control the militia the revolution began (1642) which for a time brought King, Lords, and Commons to an end. In April heavy lists of absentees from the House of Lords are noted in the records. In May the Lords found time to pass an interesting bill "to restrain all Peers made hereafter from sitting and voting in Parliament," which foreshadows a similar attempt in 1719. In the same month "the Lords, finding the business of the Kingdom to lie upon a very few," sent out a special summons which by the king's command was disregarded. In August came a message from the king, who had set up his standard at Nottingham, and the war had practically begun. Remnants of the two Houses continued to sit, "resolving" and "ordering" many things, while many of their members daily flocked to the king, and the real work was being done at Edge Hill, Marston Moor, and Naseby. In August 1643 "a Petition for peace is presented to the Commons from many civilly disposed women of the cities of London,

Westminster, etc. About 5000 females attend and are not dispersed without bloodshed." So true is it that history repeats itself, with variations. During October the attendance in the Lords was from three to nine earls, one viscount, and from one to five barons. A few months later these few respectfully declared "That notwithstanding some discourses they could never suspect that the House of Commons, composed of so many gentlemen of ancient families, would do any act to prejudice the ancient nobility"; this because the Lords and Commons had just agreed that the Great Seal and other noble offices should be managed by committees of both Houses. In 1645 the Commons themselves began granting peerages by ennobling Cromwell and Fairfax and creating four dukes, four earls, and two marquesses, subject in form to His Majesty's consent, who was at the time a fugitive in the land, fitfully striving to open up negotiations for peace. In 1646 the Lords agreed to a message from the Commons suggesting the abolition of tenure by knight's service—a change of enormous importance which was not effectually carried out till after the Restoration. In 1647 the Lords, having received many humble letters from the king, resolved "That there shall be no harm, prejudice, injury, or violence done to his Majesty's royal person. That there shall be no change of government, other than has been these three years past. That his Majesty's posterity shall be in no way prejudiced in their succession to the Crown and

government of these kingdoms"; and the Commons showed a bold front to the army by declaring that it did not belong to the soldiery to meddle in civil affairs, or to present, as they had done, any petition to Parliament without the advice and consent of their general. But it was not long before they discovered their mistake, for they had set up a creature stronger than themselves. An attempt to disband the troops without their pay soon showed them that deferring supply to the king was a very different thing from deferring supply to a clamorous and victorious army, howsoever bravely the Houses might declare "that the Lords and Commons assembled in Parliament do own this army as their army, and will make provision for their maintenance so soon as money can be raised." The power had passed into the hands of the extremists. Moderate men might resolve all day that the fundamental constitution should not be altered, and declare against tumultuous assemblies and agree to treat with the king, and pathetically raise the ghosts of past rivalries between Lords and Commons. A new division had arisen in the country between those who were for one state religion and those who were for freedom of conscience and worship; and on the side of the latter were Cromwell and his Ironsides. "Pride's Purge" swept from the Commons all opposition to the New Model Army. Extremes beget extremes, and Charles had only himself to thank that he had thrown the country into the hands of men who would be content with nothing less than his death.

The few peers left in the House of Lords put in a feeble protest (two or three earls and one baron on several occasions constituted the House), and within a short time of the king's execution (1649) the Commonwealth Parliament had resolved, "That the House of Peers in Parliament is useless, dangerous, and ought to be abolished," and put their resolution into effect. The Lords were completely overthrown, and though they returned with Charles II eleven years later, not all the king's horses and men could really put them together again. The Commons were now established beyond possibility of dispute as the predominant partner; and the Lords, returning, rapidly adapted themselves to the position of a rather curiously constituted and erratically working second chamber, depending for what power was left to them on a skilful use of parliamentary bribery and corruption.

Even in their absence, however, the necessity for a second chamber of some kind was felt; but the Council of State of the Commonwealth, limited in numbers and approved by the Commons, though containing several peers and sometimes called the House of Lords, was very far removed indeed from the body whose place it had taken for a time. "The Other House" was the name which was officially given to it, and every precaution was taken against the danger of its acquiring too much dignity in its dealings with the Commons.

CHAPTER VII

FROM THE RESTORATION TO THE BEGINNINGS OF PARTY GOVERNMENT

When General Monk's skilful *coup d'état* brought Charles II to the throne the lords came into their own once more. Five earls, one viscount, and four lords on the first day of the first Parliament found themselves in the Upper House; and in all the wild rejoicings that the reign of compulsory godliness was over their heartfelt gratitude must have glowed with a very special warmth. Their first step was to regain possession of the journals and records, which had been safely kept in a house in the Old Palace, Westminster; and on the following day they applied themselves to business by arranging the customary fines for non-attendance at prayers. They were soon joined by larger numbers of their fellows, and a committee was appointed to examine the records "as to any pretended acts or orders which have been passed and are inconsistent with the government of King, Lords, and Commons." Both Houses were zealous in disallowing anything that had been done during the Commonwealth, and in heaping

obloquy on those responsible for the death of Charles I. In the Lords, cases of the privilege of peers once more became of continual interest, and we find an early instance of a peer's objection to being elevated from the Lower House.

This first Parliament distinguished itself by finally abolishing that relic of the feudal age, the holding of land by knight's service, and sweeping away wardships, forfeitures by marriage, fines for alienation, aids, scutage, purveyance, and all the convenient methods by which kings had been able to raise money with some show of legality without recourse to Parliament. This, of course, enormously lightened the burden upon the peerage and all the landowning class; and by way of compensation the royal revenue was made up to the fixed sum of £1,200,000 a year. It was urged that to provide the sum lost by the abolition of knight's service, and estimated at £100,000 a year, a tax should be laid on all lands which had been held by knight's service; but the landed interest was strong, and not prepared to take up again the heavy burden of which it saw a chance of being relieved. By a majority of two in the Commons a hereditary excise duty took the place of the feudal impositions; and drinkers of beer and other strong liquors were compelled to compensate the Crown for the privileges it had lost. This was not done in any spirit of teetotalism; the Restoration period was not by any means a teetotal age.

The next step was to restore the bishops to their

ancient honours, and on November 20, 1661, they attended for the first time, twenty-two in number, with the Archbishop of York. Another matter of interest to the Church was finally settled when, in 1664, the right of the clergy to tax themselves in convocation was surrendered by the simple process of a verbal agreement between Archbishop Sheldon and Lord Chancellor Clarendon; and in 1665 an Act was passed for the taxing of the clergy in Parliament, and the parochial clergy were for the first time given votes for members of the House of Commons.

Amid the many disputes between the two Houses in the reign of Charles II three stand out as of great constitutional and legal importance. There were various controversies over a petition of the Lords respecting the form of accounts, their refusal to commit Clarendon when he was impeached by the Commons, the insertion by the Commons of a clause in a bill on the same subject as that of a bill already pending between the two Houses, and such matters; but the first real collision took place in 1668, when the Lords heard a petition by one Skinner against the East India Company. The Company pleaded that there was no jurisdiction in the Lords, and the Commons took up their battle. The point was that this was not an appeal, but an original complaint, which ought to have been first heard in one of the ordinary common law courts. There were conferences, and hot words passed between the two Houses. The Commons put the

plaintiff in custody, and the Lords retorted by committing the chairman of the defendant Company, and so the quarrel went on till in 1669, on the king's suggestion, the whole of the records of the dispute were erased from the journals of the two Houses. And so the matter dropped; but the House of Lords has never since then attempted to act otherwise than as a court of final appeal, except in cases of impeachment or on the trial of peers. The second dispute was also legal, and ran a very similar course, with the difference that the Lords this time were right and prevailed. In 1675 a Mr. Shirley, having a Chancery action against Sir John Fagg, a member of the House of Commons, appealed to the House of Lords. The objection of the House of Commons at first seems to have been an objection to any member of the Commons being brought up at the bar of the Lords, but it ultimately resolved itself into the assertion that no appeal lay to the Lords from Courts of Chancery. The Commons imprisoned all the four counsel for the appellant, and the Lords attached the Serjeant-at-Arms. The Lieutenant of the Tower, distracted by conflicting claims, refused to hand over the learned gentlemen to the Lords and disobeyed their writ of habeas corpus; and after conferences, resolutions and counter-resolutions, and the arrest of the appellant by the order of the Commons, a long prorogation intervened and nothing more was said. Shirley's appeal was not proceeded with; but the Lords' right to entertain Chancery appeals has not been further disputed to this day.

The third great conflict was not so violent, but of more constitutional importance. The great financial question had been raised among the first that called for the attention of the Houses. Knight's service having been abolished, and taxation having become general, the Commons had more reason than ever to claim the control of it as their own. In 1661 the Lords sent down to them a bill providing for the paving of Westminster streets. The Commons were on the alert at once. The bill "went to lay a charge upon the people," so they framed a bill of their own. This the Lords amended. The Commons said the amendment was a breach of privilege. Both were obstinate, so Westminster went unpaved. For ten years the question slept; then again, in 1671, the Commons resolved "that in all aids" (the old word was still used) "given to the King by the Commons the rate of tax ought not to be altered by the Lords," and the Lords retorted that "to make such amendments and abatements both as to matter, measure, and time in Acts for rates and impositions is a fundamental interest and undoubted right of the House of Peers, from which they cannot depart." There followed discussions and conferences, in the course of which the Lords did "much dislike the unusual expressions of the Commons"; but in spite of that they gave way. In 1677 trouble broke out again. The Lords amended another money bill, namely, "an Act for raising the sum of five hundred eighty-four thousand nine hundred seventy-eight pounds two

shillings and two pence halfpenny for the speedy building of thirty ships of war." The Commons resolved on "a conference to preserve a kind correspondence with the House of Peers on their amendments to a bill of supply." The said amendments were rejected by a large majority, and the Lords withdrew them "to comply with the present necessity in point of time, and out of tenderness that the whole may not suffer by our present insisting on that which is our undoubted right." And the Commons in the following year resolved "that all aids and supplies and aids to his Majesty in Parliament are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords." From that position the Commons have never receded. It was not, and is not, denied to the Lords that they may reject a money bill *in toto*, though, as we shall see, such power of rejection was (in the case of the repeal of the paper duties in 1860) declared to be a thing to be "justly regarded with peculiar jealousy"; and the practical safeguard against its exercise is the inclusion of all financial measures in one Act, so that no particular proposal can be rejected without paralysing the whole administration of the government of the country.

It is to be noted, too, that there were several important decisions in this period as to the nature of a parliamentary peerage. In 1670 the House laid it down that for proof of a peerage there must be documentary evidence, either a writ or a patent. In 1673 it was held (the rule has been already mentioned, but it was now definitely stated) that the receiving of a writ, together with the taking of the seat, constitutes a hereditary peerage; and in 1677 this rule was stated in another way by the finding that proof of mere receipt of a writ is not enough: there must also be proof of the taking of the seat.

Meanwhile the Commons had been making, in form at least, steady progress in their relations with the Crown and the executive. The appropriation of supplies to a particular purpose (1665), the appointment of a commission to examine public accounts (1666), the Habeas Corpus Act (passed in 1679 after several attempts to pass similar bills had failed through the opposition of the Lords) were all landmarks in the history of popular liberty, and they fixed principles which had been points of contention for ages; and the darker side of the shield is shown in the long series of Acts—the Corporation Act (1661), the Act of Uniformity (1662), the Conventicle Act (1664), the Five Mile Act (1665), the Test Act (1673)—all directed against nonconformity, Roman or Protestant, and dictated partly by fear of the Roman Catholic tendencies of the king, partly by the uncompromising

intolerance of the age. By the Parliamentary Test Act (1678) Roman Catholic peers were excluded altogether from Parliament, to which they did not return till 1829; and the one little ray of hope in all this period, a bill for the relief of dissenters, got through the Commons, but was extinguished by amendments in the Lords.

In the midst of it Charles, humourist, dilettante, idler, and rake, enhanced the dignity of the peerage by making duchesses of the ladies of his acquaintance and dukes of their sons, thereby founding the lines of some of the haughtiest of our noble houses. He was content to let Parliament do what it would, and in his exploits in the field of foreign affairs brought England so low that even the hard and joyless days of Cromwell began to be recalled with regret. But though outwardly flippant and frivolous, amused with the debates in the Lords, and treating all opposition with an indulgent contempt, he was only biding his time; and while he and his brother James were alive it cannot be said that the apprehension of a Roman Catholic revival was without solid justification, or that strong measures were not necessary if the work of the Reformation was not to be undone. It was not merely fear of the king at home which goaded the Protestant party to excesses; there was reasonable ground to fear imminent danger from France. Charles, with the assistance of a small council, which had since the time of James I taken the place of the old King's Council, had, though apparently yielding

to Parliament, in fact been maturing plans which, if known, would have been repudiated by Parliament with the wildest indignation. To check these intrigues Sir William Temple, after the overthrow of the "Cabal," made an attempt to re-establish the authority of the whole Privy Council with its numbers reduced to thirty; but Charles again developed a small body of advisers within the council, and in this limited council is to be found the beginning of Cabinet government of the modern type. From this period too the nicknames "Whig" and "Tory" began to be applied to the two great parties in the state. The names are reputed to have come from Scotland and Ireland. In Scotland the Whig was the Presbyterian enthusiast who had taken arms against the Government at the time of the persecution of the Covenanters. In Ireland the Tory was the Roman Catholic outlaw who had fled to that wild country for refuge. So in England the Whigs were the anti-court men, who upheld the reformed religion or leant towards nonconformity; the Tories were the High Church passive-obedience and divine-right men, who had no objection to a Roman Catholic king. Thus when Charles, rendered independent by secret subsidies from France, had finally beheaded all of the opposition who were obstinate, and reduced the remainder to complete subservience, ruled for over three years without a Parliament, but with a cautious observance of the law which bore eloquent testimony to the moral effect of his father's death, and died in the odour of sanctity

with one mistress by his side and the name of another on his lips; and when James II, received as usual with acclamations and hope, had by his frank Romanism, his unspeakable brutalities, and his intolerable assumption of superiority to all law disgusted even the most royal of royalist Parliaments, the country was ready, with the elements of a Cabinet, two parties, and a duly chastened House of Lords, to launch out on to the comparatively smooth waters of modern constitutional government.

The House of Lords had, like the Commons, faced James with some boldness in the one Parliament of his reign, and the invitation to William and Mary was signed on the great day of the acquittal of the Seven Bishops (June 30, 1688) by, among others, the Earls of Shrewsbury, Devonshire, and Danby, Lord Lumley, and the Bishop of London; and when William had landed and James had fled about thirty lords made a declaration in favour of the new arrival. In the convention which followed (it was a convention because the old rule held good that if there was no king there could be no Parliament) the Commons contained a preponderance of Whigs, the Lords a preponderance of Tories; and it is interesting to mark how thus early the two Houses begin to assume their own peculiar political complexions. The Commons resolved that James had broken his contract, abdicated, and rendered the throne vacant; and that it had been found "inconsistent with the safety and welfare of this Protestant kingdom to be governed by a Popish prince." While agreeing with the latter

part, the Lords preferred "deserted" to "abdicated," and objected to the declaration that the throne was vacant. Their confidence had been shaken in the divinity of James, but the idea of divine right and of the sheer impossibility of the non-existence of a king was not dead. Much learning was displayed, and a proposal for a regency leaving James nominally king was only defeated by two votes; and after discussion the Lords gave way with unanimity, William and Mary were declared king and queen, and with a like unanimity the Declaration and Bill of Rights were carried through. The king was now under contract with his people, and "divine right," though a dangerous incentive to sedition, became in time an interesting and harmless hobby. The succession to the crown was settled and the dispensing power abolished; all the abuses of prerogative under which the country had groaned were declared illegal, including the objectionable precedent of keeping a standing army without Parliament's consent; and there could no longer be any dispute on the broad principle that Parliament could unmake what Parliament had made.

At this epoch the number of the lay peers was about 150, the four Stuart kings having together created 173, against which creations has to be set the fact that 99 peerages during the same period become extinct. Only about eighteen were added to the list by William and Anne, and it was not till George I that the huge increase was made which so vitally changed the character of the

House of Lords. In the meanwhile this small and select body began in a mild and gentle key the long struggle which has not yet come to an end. An abjuration bill for the punishment of those who would not renounce James was lost in the Lords; but as a similar bill had been rejected by the Commons, there was no harm done. It was on financial questions that the first little breeze sprang up. The Commons were consolidating their power of control, and annoying even the constitutional William III by voting grants for one year only and appointing a commission of inquiry into accounts. The Lords were anxious for a part in the nomination of this commission, so the Commons looked round for a finance bill which the Lords would find it difficult to reject, and tacked the names of the commissioners on to that. It was a bill imposing a poll-tax to supplement a new land tax much disliked by the country gentlemen. The Lords were intensely indignant; but we were at war with France, and the money was badly needed. It does not seem to have occurred to them to revive the claim to a right of amending money bills. After a protest they surrendered, and a precedent was established for future use. In the following year William exercised one of the expiring privileges of the past by refusing to sign a bill sent up by both Houses. This only happened three times again.

Once more (1692) the Peers made an effort to get themselves represented on a financial commission, but gracefully abandoned the claim, and reasserted them-

selves in the following year by throwing out a bill directed against the growing corruption involved in allowing servants of the Crown to sit in the House of Commons, and by introducing the bill for triennial Parliaments, which was rejected by the king (1693). After William had refused to assent to a second "Place Bill" (the privilege of bribing members of Parliament was too valuable to be lightly given up), the Triennial Bill was, with the assistance of a little financial pressure, ultimately passed (1694). For a time all differences were put aside in the general panic caused by the Jacobite plots, and the real interest of these few years lies in the fact that William attempted with scant success to carry on the government with a mixed ministry of Whigs and Tories, and was in a short time compelled to give all the offices to the Whigs, who were supported by a majority in the Commons. Thus for the first time the nation saw a band of ministers all of one party colour commanding a majority in the Commons; and "the Junto," as this ministry was called, completed the analogy with the modern Cabinet by adopting something like collective responsibility. There was this difference, however: that on losing their majority neither they nor the king thought it at all necessary that they should resign; they remained on, quarrelling with the Tories till their position became impossible. Anne, too, liked her ministries well mixed, and it was not till George I found himself too bored to attend to matters he did not understand, discussed

in a language he could hardly speak, that parliamentary party government really began.

A short struggle between the Houses in 1697, over the imprisonment and release of a gentleman who had been forging the endorsements of exchequer bills, recalled the glorious days of Skinner *v.* the East India Company, and Shirley *v.* Fagg; but with measures like the disbandment of the troops the Peers did not dare to interfere, such was the horror of a standing army which James II had instilled into the country's mind. The question of amendments to money bills was fought over again in 1700, when the Commons tacked an Irish Forfeited Estates Bill to a Land Tax Bill, and won, in the face of the violent opposition of the Lords and the keen displeasure of the king, who had been portioning Ireland out among his friends (including Dutch generals), and saw no reason why the process should be rudely interrupted. More Jacobite plotting and the danger from France united all parties in passing the Act of Settlement (1701), by which at William's request the crown was settled after Anne on the House of Hanover. With two clauses only of this most important document need we be delayed. Both if not repealed would have checked the growth of the modern system, and to what end they would have led our Constitution it would be interesting to speculate but impossible to say. By one it was intended that the publicity and responsibility of the Privy Council should be substituted for what seemed at that time the dangerous irresponsibility of

the small and secret Cabinet which had formed within the larger body; by the other all holders of office under the Crown were to be excluded from Parliament. By promptly repealing both clauses, and substituting re-election on acceptance of office as a sufficient safeguard against corruption, Parliament left the apparently dangerous Cabinet free to develop into an essential factor in the harmonious co-operation of legislature and executive and one of the most characteristic and happy expedients of all our strange and wonderfully balanced Constitution.

Foreign affairs, which were complicated and warlike, claimed a great deal of attention during this period, and a Tory House of Commons with a policy of peace found itself in violent conflict with a curious combination of the king, a Whig House of Lords, and popular opinion. Impeachments of Whig ministers before a House which was in favour of the accused provided the nation with excitement for a time, but it all came to nothing. Nobody was hanged or beheaded, and when after the election of 1701 the Tories in the Commons tried to censure the Upper House for its conduct, they could not find a majority to do it.

Once again, early in the reign of Anne (1702), the Peers made their protest against the "tacking" of a bill on to a money bill, but having declared the process unparliamentary and tending "to the destruction of the constitution of this Government," they again gave way. A determined attempt by the Tories to

oust all Whigs from offices (the Occasional Conformity Bills of 1702, 1703, and 1704) was three times defeated by the Whig Lords, and even an attempt at "tacking" on this occasion failed. Two famous cases (Ashby *v.* White, and the case of "the men of Aylesbury" in 1704) led to another struggle between the two Houses on the question whether the Commons had exclusive jurisdiction over all matters connected with the franchise. The issue, though fought between Lords and Commons, was really between the Commons and the courts of law; and the Commons undoubtedly attempted to stretch their claim of privilege a good deal farther than it would go, to say nothing of the fact that the wholesale imprisonment of parties, solicitors, and counsel was becoming a little foolish and out of date. The quarrel ended indecisively with a prorogation which released everybody, after having given the Lords an opportunity of laying down some excellent doctrine about arbitrary attempts of the Commons to take the law into their own hands.

In 1707 the House of Lords took an important step in its history by opening its doors for the first time to the sixteen representative Scotch peers who came in under the provisions of the Act of Union. Protests had been raised during the passing of the bill. The Bishop of Bath and Wells had compared the Union to "the mixing together strong liquors of a contrary nature in one and the same vessel," and Lord Nottingham looked forward with horror to dire results. The

number of Scotch peers was thought by some to be too large, and their subjection to an election was thought by others to be too undignified for a member of the House of Lords. On the whole, however, the Act (which was first discussed as a treaty, and then more shortly as an Act) passed with remarkable ease; but the final protest of the dissenting peers is worthy to be quoted as a suitable formula for use by peers, Conservatives, and others in opposition to all valuable reforms. "Because the Constitution of this kingdom has been found so very excellent, and therefore justly applauded by all our neighbours for so many ages, that we cannot conceive it prudent now to change it, and to venture at all those alterations made by this bill, some of them especially being of such a nature that as the inconvenience and danger of them (in our humble opinion) is already but too obvious, so we think it more proper and decent to avoid entering further into the particular apprehensions we have from the passing of this law." In special cases particulars may be filled in as desired.

After a period of Whig ascendency, supported and strengthened by the continual energy of France in the Pretender's cause, and brought to an end largely by the unwise impeachment of Dr. Sacheverell, the Tories returned both to office and to parliamentary power, and one or two things happened which may now seem strange. The House of Lords, still Whig, saved the rights of foreign Protestants, against whose immigra-

tion the Tories had raised a cry. In spite of certain intrigues and cross-currents, the main fact stood out that the Tories were all for peace, and the Whigs under Marlborough's influence were determined on the continuation of the war. The Commons voted by a heavy majority in favour of the Government proposals, which preceded the Peace of Utretcht, while in the Lords the Whigs prevailed by sixty-two votes to fifty-four. To this the Tory reply was the creation of twelve peers, who being singularly unanimous (a sarcastic Whig inquired whether they would vote singly or by their foreman) just turned the scale in the Upper House.

James I had in a general way created peers for party purposes, but this was the first time that a number had been created at once with a view to overcoming a majority on a given specific subject. Such a thing has never been done again, partly because the increasing disproportion between the parties in the House has made it more difficult, as the number to be created would have to be so large, partly because the mere possibility and threat of such a thing have, as in 1832, been in themselves enough ; but it remains as a possibility, as the last resort in the case of that absolute deadlock against which our Constitution makes no specific provision. What the threat to stop supplies was against the king, such is the threat to create peers against the House of Lords, with this distinction, that the modern House of Lords has shown so much more political discretion than the mediæval king that the

Commons have only once had to use it to enforce their will.

It was perhaps the fear of being swamped by new creations that caused in this same year (1711) a resolution of the House "that no patent of honour granted to any peer of Great Britain who was a peer of Scotland at the time of the Union can entitle such peer to sit and vote in Parliament, or to sit upon the trial of peers." The case was that of the Duke of Hamilton, a Scotch peer who had been made Duke of Brandon in the English peerage. It was fully argued by counsel; and the resolution having been reaffirmed in 1719, in the case of the Duke of Soloway, was not finally rescinded till 1782, when the judges were consulted, and the Duke of Hamilton of the day was at last admitted to the House. That he could be made an English duke was not denied; but the theory seems to have been that though an English duke he could not sit or vote, because he was a Scotch duke. The Crown apparently acquiesced in this view, which was ultimately and unanimously decided by the judges when consulted to be wrong. The House had originally refused to ask the judges' advice on the point, from which it may be gathered that the question was at first looked at from the political rather than the legal point of view.

CHAPTER VIII

FROM GEORGE I TO THE REFORM BILL

With George I the period of true parliamentary Government under the guidance of "Great Commoners" began. The creation of "ad hoc" peers had shown the Lords their true position: the king became, till the time of George III, a person of almost no importance. Anne was the last sovereign who ever declined to assent to a bill (1707); and the history of the next hundred years centres round the personalities of men like Walpole and the two Pitts. Even the Tory party was reduced to insignificance: complicity and suspected complicity with Jacobite plots had shattered its influence in the country. To the first Parliament of George I only some fifty Tory members were returned, and for fifty years the Whigs had everything their own way, and the House of Commons, corrupt and unrepresentative though it was, was raised to a position which all the energy of George III was unable to shake. The Whig leaders spent money lavishly in keeping the House of their own political complexion; but it was just this absence of serious conflict between the Com-

mons and the Lords which allowed the former peacefully to consolidate its power, till it was strong enough to throw aside the discreditable supports on which it had risen, and to stand alone.

The period began with a fierce attack upon the leaders of the late Tory Government, in the course of which the names of Lord Bolingbroke and the Earl of Oxford were erased from the list of the peerage, though in Oxford's case impeachment was escaped by a disagreement between the Lords and Commons on a matter of form.

It was the fear of Jacobite risings which led to the introduction of the Septennial Bill, in 1716, in the House of Lords; and by large majorities in both Houses Parliament prolonged its own life for an extra four years, and fixed a term which, in spite of many proposals to alter it, remains the law till this day.

It is a significant sign of the times that nothing of importance happened to the Lords till an attempt at drastic reform from within was made in 1719 and 1720. The number of lay peers was then 178, and, with the support of the Whig ministry under Sunderland and Stanhope, and the assent of the king, a bill was introduced into the Lords with the object of restricting further creations. No more than six were to be added to the existing peers, though whenever a peerage became extinct a new creation might be made. The fear of being once more swamped was no doubt responsible for these proposals, which were accepted with alacrity by the House of Lords; but the Commons were roused.

The scheme would have hedged in the peerage as a close oligarchy for ever, freed from the danger of the one weapon which, short of revolution, could be used to control their otherwise irresponsible autocracy. Walpole understood the threat to the free working of the Constitution; country gentlemen saw their hopes of titles vanishing; even the "placemen" (in George's first Parliament 271 members held pensions and sinecures from the Government) wavered in their fidelity to the patrons to whom they owed so much: and the Commons did an excellent day's work by rejecting "the most dangerous constitutional innovation since the Revolution."

It was after this little outburst of aristocratic energy, and the confusion caused by the first arrival in England of the company promoter with his South Sea Bubble, that Walpole's administration began.

For over twenty years England was socially, economically, and politically at peace, to her very great advantage. We are told that there were occasionally so few Tory members in the Commons that they hardly troubled to put in an appearance, and most of the Whig members were well paid for their attendance.

It was a happy time. Nothing went either backwards or forwards, save for certain financial operations which depleted the sinking fund and effected the abolition of a considerable number of import and export duties; so perhaps it was well that it was too good to last. The country insisted on a war. Spain and "Jenkins's

ear" provided the necessary excuse, and the European struggle began which brought Walpole's ascendency to an end and left the way clear for his great successor—William Pitt.

Meanwhile the House of Lords had been doing nothing in particular, having indeed nothing in particular to do. Two archbishops in 1721 made a stout attempt to save the country's morals by resisting an Act which relieved the conscience of Quakers, but they found little support. They were more fortunate in 1736, when the Lords threw out a bill for the relief of these same Quakers in the matter of tithes. Some good was done in 1737 by amending a vindictive bill designed to punish Edinburgh for a riot that had taken place in the city.

But there is nothing, so far as the House of Lords is concerned, which is more significant in the history of this epoch than the fact that the House becomes the last refuge of retired statesmen and elevation thereto coincident with loss of influence. Pulteney, one of Walpole's determined enemies, sank into comparative obscurity when he became Earl of Bath; and Walpole himself was held to have done no good to his reputation by retiring to a peerage and a pension to end his days.

The House of Commons was still determined that no man should report its proceedings, though one member might have differently expressed his reason when he said: "If we do not put a speedy stop to this practice

you will have the speeches of this House every day printed, even during your session, and we shall be looked upon as the most contemptible assembly on the face of this earth." But reports got abroad, nevertheless, and with them is associated the honoured name of Dr. Johnson; and it is clear that public interest was beginning to be aroused in the details of its proceedings. By a Place Bill in 1742 it endeavoured to shake off some of the corruption which bound it hand and foot, and in 1745 is heard the first faint cry of reform in an unsuccessful amendment to the Address which spoke of the people's "right to be freely and fairly represented." But this was as yet a voice in the wilderness.

The remainder of George II's reign is summed up in the personal triumph of Pitt at home and the military triumphs and expansion of England abroad. Parliament was subservient—not with a very honourable subservience, it is true, but subservient to a man who at any rate depended on its goodwill and on the goodwill of the nation. When George III came to the throne in 1760, the great man was already tottering. George was the first of the Hanoverians to have a mind—a small one, but his own; and the Tories, despairing of the Stuarts, turned with some hope to a king who at last seemed to promise defiance to independent ministers and an independent Parliament. The Earl of Bute was set up as Pitt came down; and the elections of 1761 were marked by a corruption more gross and palpable than anything that

had yet been known, and only surpassed by the elections of 1768. The mayor and aldermen of one borough offered the seats to the sitting member for £5760, and being imprisoned by the Commons for their offence, at once made further offers to other parties from their prison. Borough seats were hawked about the country at £4000 or £5000 apiece, and one peer, it is said, paid £75,000 for the privilege of controlling the borough of Northampton.

In the great struggle between Wilkes and the Commons the Lords took but a small part. Pitt, now the Earl of Chatham, raised his voice against the illegality and folly of the Commons' proceedings in attempting to dictate to the electorate whom they should elect; but he could not prevail upon the Lords as a body to interfere, and they in fact (1770) passed a resolution that "any resolution of this House, directly or indirectly impeaching a judgment of the House of Commons in a matter where their jurisdiction is competent, final, and conclusive, would be a violation of the constitutional rights of the Commons, tends to make a breach between the Houses of Parliament, and leads to general confusion." As the Commons were pushing their claims to extravagant lengths, this was an occasion on which the Lords would have been justified in interfering, and the protests signed by forty-two peers put the case with considerable force, and incidentally outline the modern theory (as to the practice there are disputes) of the position of the

House of Lords. They dissented: "*Because, we apprehend, That the Rights and Powers of the Peerage are not given for our own particular advantage, but merely as a constitutional trust, to be held and exercised for the benefit of the people, and for the preservation of their laws and liberties; and we should hold ourselves betrayers of that trust, unworthy of our high rank in the kingdom and of our seats in this house if we considered any one legal right of the subject, much less the first and most important of all their rights, as a matter indifferent and foreign to the Peers of this kingdom.*

"*Because by this resolution it is declared to all the world that if the House of Commons should change the whole law of election, should transfer the rights of freeholders to copyholders and leaseholders for years, or totally extinguish those rights by an arbitrary declaration; should alter the constitutions of cities and boroughs with regard to their elections, should reverse not only all the franchises of suffrage which the people hold under the common law, but also trample upon the sanctions of so many Acts of Parliament made for declaring and securing the rights of election; that even in such a critical emergency of the Constitution the people are to despair of any relief whatsoever from any mode of direct or indirect interference of this House.*"

Various attempts were made to persuade the Lords to join in the struggle, but in vain: Wilkes had to fight his own battle, and it was not till twelve years later

(1782) that the Commons admitted that they had been in the wrong. In a similar dispute between Wilkes and the Commons over the exclusion of strangers (which involved the question of the publication of debates) the only part the Lords took was to lead the way in enforcing the rule in all its strictness, even to the exclusion of members of the Commons. From a "protest" of a small group of peers in 1770 we get an interesting glimpse of the course of this contest. The House was moved that the standing order relating to the exclusion of strangers be read; this was done and the House was cleared; but the protesters objected:

"*Because a peer being in the course of a most spirited but proper and decent speech, introductory to a motion of importance to the public safety which he declared it his intention to make, was, under pretence of speaking to order, interrupted in a manner equally insidious and disorderly. When the peer was thus improperly and groundlessly interrupted, and the Standing Order No. 112 relative to the clearing of the House read, another peer getting up to speak to order upon this astonishing interruption could not obtain a hearing. The irregular, clamorous, and indecent behaviour of several lords who called out incessantly 'Clear the House! Clear the House!' rendered all argument and all representation on the subject utterly impracticable.*

"*This indecent and hitherto unprecedented uproar was continued, even when the noble Lord on the Woolsack stood up with his hat off to explain order; the*

same tumult which at first interrupted the lord in his speech and did not permit the lord who spoke to order to be heard, prevented also any information from the Woolsack.

"*In this unexpected tumult, in which every idea of Parliamentary dignity, the right of free debate, all pretence to reason and argument were lost and annihilated, despairing of being able to hear or to be heard, we found ourselves at length obliged to leave the House; and we cannot without the utmost concern reflect upon the method in which the House was cleared, thinking the personal interference of peers, and their going to the Bar to require the members of the other House to withdraw, to be equally derogatory from the dignity of the Lords and disrespectful to the House of Commons.*

"*We must consider this proceeding (too manifestly premeditated and prepared) to have been for no other purpose than to preclude inquiry on the part of the Lords, and under colour of concealing secrets of state to hide from the public eye the unjustifiable and criminal neglects of the ministry in not making sufficient and timely provision for the national honour and security.*"

In other words, the assembled Lords were more interested in turning out members of the Commons, at the risk of a free fight, than in listening to a spirited though decent speech by a member of the opposition; and shortly afterwards the House refused to relax the standing order in favour of the Commons, the Commons having retaliated by excluding Peers. On the question

of publication of debates, on which the Commons were fortunately beaten by the determination of the people of London, the Lords followed much the same policy, and had from time to time their own little quarrels with printers and publishers who defied their orders, W. Parker, of *The General Advertiser and Morning Intelligencer*, receiving particular attention, till the habit of objecting to publication gradually died out and gave way to the modern habit of objecting to non-publication, which cannot be visited with such drastic penalties. With the king and North in control of the nation's policy, and going rapidly downhill towards the *débacle* of the American Revolution, Parliament had little to do. The Whigs for a time (in 1776) gave up all attempts to influence the Commons; and the policy of George in dealing with the Lords was the profuse creation of peers. His object was merely to do away, if he could, with party government; but the younger Pitt came to the work with a new theory. A peerage was now to be a reward for merit, a means of uniting the aristocracy with the wealthier middle classes, an honour to which any man in the country might hope to rise; and on this principle by the year 1801 the younger Pitt had created no fewer than 141 new peers (though it is to be noted that this included Scotch and Irish peers, peeresses in their own right, and mere elevations from one rank in the peerage to another), the total addition to the peerage during the long reign of George III being 388. This rapidly transformed the whole

character of the House. George had created peers who could be trusted as Tories to oppose the Whigs, and to ensure that the seats they controlled in the Commons should be safe for the king's party, the question between parties being obedience or resistance to the Crown. Pitt chose men on an admirable principle, but they were men who by their wealth and position and the ownership of land were bound inevitably to take their stand in opposition to the advance of democracy. And as the danger from the Crown died away with the failure of George III to reimpose the antiquated ideas of sovereignty, old Tories with their conviction of the divine right of kings joined the new Tories with their conviction of the divine right of wealth and land; and the Whigs, now by the swamping process an insignificant minority, either crossed over to the Tory side or remained to change gradually into the small band which now represents the Liberal party.

The Earl of Chatham, having fought against the folly of taxing the American colonists, and against the extravagant pretensions of King and Commons alike, returned to power for a short time in 1766, but his day was over, and illness drove him from public life. From time to time he reappeared to criticise his successors. In 1770 he prophesied the speedy end of the system of borough elections. In 1772, 1776, and 1777 he appealed with all the weight of his eloquence for conciliation in America, but in vain; and he died in harness in 1778, after a final effort which stood out as one of the

most dramatic incidents which either House had ever seen.

With the advent of the younger Pitt began the struggle for parliamentary reform. Wilkes in 1776 had outlined a scheme which found no favour, and the years 1782, 1783, and 1785 witnessed three resolutions by Pitt in the Commons which all came to nothing at the time. The last one provides an extreme example of the lengths to which the "vested interest" argument can go, for it was proposed to compensate the "owners" of rotten boroughs which were disfranchised with a sum of one million pounds. Rockingham's Civil List Act in 1782 was more effective, in suppressing pensions and sinecures; but after these first efforts the question slumbered for a while, and the House of Lords came to the front as the servile object of a peculiarly pernicious kind of "influence."

In 1783 the king, having experienced some considerable difficulty in finding a ministry at all, found one which he was determined to upset at once. Fox passed a bill for the government of India through the Commons; and the king, disliking not so much the bill as its introducer, authorised Lord Temple to canvass peers in the king's name, with this written upon a card: "His Majesty allows Earl Temple to say that whoever voted for the India Bill was not only not his friend, but would be considered by him as an enemy: and if these words were not strong enough Earl Temple might use whatever words he might deem stronger and more to

the purpose." On December 17, the Commons in great indignation resolved "that it is now necessary to declare that to report any opinion or pretended opinion of His Majesty upon any bill or other proceding depending in either House of Parliament, with a view to influence the votes of the members, is a high crime and misdemeanour derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the Constitution of this country." In spite of this, the bill was on the same day rejected in the Lords: and the king forthwith dismissed the ministry responsible for it. But nobody seems to have had the spirit or independence to carry the matter further, though the rule laid down remains one of the strictest by which parliamentary debate is governed.

When Pitt on Fox's fall took up the task of governing in the face of a hostile House of Commons, the House of Lords gave him some support of a not very effective kind, and after the election of 1784, which gave Pitt his majority, they retired again into the background. With the long trial of Warren Hastings we are not concerned; but the Lords woke up again to some activity in 1792, when they in effect put back for thirteen years Wilberforce's agitation for the abolition of the slave trade. They went, however, carefully into the subject, had conferences with the Commons on certain drastic resolutions passed by them for the suppression of the trade, considered petitions from the agents of the West India colonies, from Barbados,

from the merchants of London, Liverpool, Bristol, and many others, which set out the happiness of the negroes, their pleasant situation as compared with that of many of the poor at home, the impossibility of obtaining "white vagrants," and the inevitable ruin to the British colonies, protested against the odium thrown upon this most deserving branch of commerce, and painted a lurid picture of unemployment in the cotton industry and the navy which would lead to the ruin of the country; they heard witnesses and counsel on behalf of all concerned (except the slaves); and what had seemed good to the Commons seemed the rankest confiscation to the Lords. A bill of a partial character was sent up by the Commons in 1794, but rejected; and it took twelve years from that date to convince the Lords. There was continual agitation and inquiry, and a bill brought in by Wilberforce in 1804 passed the Commons, but was thrown out when it went higher, and the trade was not finally abolished till 1807.

The times were disturbed, and the French Revolution stiffened the party of reaction. Pitt, though he had begun well on the subject of parliamentary reform, now found himself repressing all manifestations of the movement which as the century came to an end rapidly gathered strength. There were riots at Birmingham (for which, by the way, the local Tories were responsible, though provoked by extreme reformers): the Habeas Corpus Act was suspended, and the House of Lords almost with unanimity passed the Treasonable Practices

Act (1795), which made all discussion of reform practically impossible. But as the Commons, though Fox fought hard, were hot on the same track, the Lords can hardly be said to have been more to blame than their contemporaries.

The Act of Union with Ireland, obtained by means which Englishmen seldom find it convenient to remember, though the perverse and romantic nature of the Irishman seldom allows him to forget them, completed the House of Lords by the addition of four Irish bishops and twenty-eight Irish peers elected for life (therein differing from the Scotch peers) by the rest of the Irish peerage; and, by a special restriction upon creation, only one peer was to be created for every three peerages that became extinct, till the number was brought down to one hundred. On the disestablishment of the Irish Church in 1869, the Irish bishops disappeared from the House; but otherwise the Act of Union has remained unchanged. An attempt to make concessions to the Roman Catholics brought about Pitt's fall, but his successor Addington, having proved a failure, joined the House of Lords, and in 1804 Pitt returned. He lived to hear the story of Ulm, Austerlitz, and Trafalgar, and to see his best friend Melville threatened with the last impeachment in our history; but before the acquittal in 1806 he was dead, and he was followed to the grave by Fox some eight months later. Then came a period of weak and unstable Governments, and in 1810 the Lords supported the Commons in one

more assertion of privilege, which brought upon them intense unpopularity and charges of tyranny such as had been reserved in the past for kings alone. From this time forward George III lost his reason entirely, and the Prince of Wales acted as regent till his father's death. The war had had its effect upon the country. The glory of Waterloo was counterbalanced in the same year (1815) by the Act forbidding the importation of wheat unless the price was over eighty shillings; and, that their rulers might not have the monopoly of economic heresy, workmen endeavoured to solve the problem of hunger and unemployment by the wholesale destruction of machinery. Trade unionism was struggling to birth—trade unionism of the violent secret-society kind, whose violence provoked and was provoked by extreme measures of repression. Any political meetings came under the ban of Lord Liverpool and Lord Castlereagh; the riots were caused by the high price of food, but in the eyes of the authorities all discussion of reform was treason.

But in the midst of it all, the opposition of the king being removed, both Houses proved ready to listen to the claims of the Roman Catholics. The fortune of motions and bills in their favour was varied, the Commons usually showing favour to the new proposals, and the Lords as often reversing their decisions, though a motion by Lord Wellesley in 1812 that the question should be considered was only lost by one vote. Subsequent attempts in 1816 and 1817 fared worse, though

in the latter year Roman Catholics and Dissenters were admitted to the army and navy. In 1821 the House of Commons passed a bill doing away with the declarations against transubstantiation and the invocation of the saints, but by a majority of 159 to 120 the Lords threw it out. Again in 1822 they rejected a bill brought in by Canning, and supported by Peel, which would have allowed the Roman Catholic peers to sit in the House of Lords for the first time since their exclusion under Charles II. Two minor bills in 1823 and a motion in 1824 met with the same fate, being attempts to enable Catholics to vote, to serve as justices of the peace, and to hold offices in the revenue. In 1825 another bill went up, and was defeated. Finally in 1827, after Canning's death, a Tory ministry came in with an open mind and the Duke of Wellington at its head. But the Duke was against emancipation, and so too were the Lords. Troubles in Ireland, however, produced a change of views. Peel came round to the opinion, and brought his leader with him, so that the demand could no longer be resisted. The king required considerable persuasion. Oxford University remained firm, and Peel lost his seat; but in 1829 the Catholic Emancipation Bill was passed after a stern fight by the bishops in the Lords, and much to the disgust of many Tories at being compelled by this sudden change in their leader's policy to swallow what their predecessors, when the party first received its name, would have hailed with joy. But apparently the Tory

party still clung to the principles of the seventeenth century; somebody must be persecuted. While they were Catholics, it was the Protestants, when they had become ardently Protestant, it was the Catholics. The *rôles* were strangely reversed, but the theory remained the same. Peel was quite frank in giving the credit to the other side. It was the first of the many instances which prove that the party of reform does its work, even though its opponents are driven unwillingly to steal its clothes.

In the last years of the reign of George III and during the reign of George IV some enlightened legislation was allowed to go through. Dissenting ministers received more toleration in 1812, and the law which imprisoned insolvent debtors was with advantage amended. The Lords, it is true, had no objection to raising the franchise qualification in Ireland (1829); but Lord John Russell in 1828 persuaded them to repeal the Test and Corporation Acts, with an amendment, however, which maintained the disabilities of the Jews. The new spirit had entered into the Archbishop of York, who said, "Religious tests imposed for political purposes must in themselves be always liable more or less to endanger religious sincerity." The Combination Acts were repealed in 1824, apparently without either House realising what it had done, and trade unions, freed from the taint of treasonable conspiracy, were left free to work out their destiny, if not in absolute, at any rate in comparative peace. Lastly, the

brutality of the criminal code was considerably relaxed, though in 1818 the Lords distinguished themselves by rejecting a bill which would have abolished capital punishment in the case of stealing from a shop articles under the value of five shillings. Scandals like this, however, disappeared within a few years, in spite of the awful consequences predicted to the business of small tradesmen.

But the great question of the age was Parliamentary Reform; and as this opens the last chapter in the history of the House of Lords, to the last chapter it shall be left.

CHAPTER IX

THE REFORM BILL AND AFTER

The cause of Parliamentary Reform had first begun to attract attention towards the end of the eighteenth century. It had been pressed forward by the energy of the popular but far from reputable Wilkes, and it had won the temporary approval of Pitt. It had become prominent again in the last three years of George III, and it was the battle-cry of those leaders who to the highly respectable Tory were selfish demagogues maliciously inciting to revolt an otherwise contented people. The country was, in fact, in a continual state of tumult, the true reason for which is to be found in lack of employment and lack of food; and of the many demands put forward the reform of the House of Commons was not unreasonably regarded as a thing to be first secured as a condition precedent to the securing of all the rest. Everything that was asked seemed wild and revolutionary, but there was hardly anything that time has not proved to be entirely reasonable and essential to decent government. No man now attempts to defend the "rotten borough" system, which was defended with

his last breath by every Tory of the time as the only safeguard against red ruin and the utter destruction of the country.

The debates on the Reform Bills must be read if the position is to be fully appreciated. The Tory attitude was quite frank: in the past votes had not been given to boroughs because of the size of the population, and therefore it was futile to argue that they ought to be given for that reason now. Kings had issued writs to Old Sarum, Newport, and such places simply to oblige their friends; therefore it could not be denied that noblemen had by the Constitution a vested interest in the House of Commons which must be jealously guarded. As for the agitation in the country, that was nothing; a mere factious, artificial thing, to be suppressed by a little firm government—a thing merely due to the recent uprising in France, as was shown by the fact that though from 1821 to 1823 petitions were many, they then ceased, and did not appear again till 1830.

The history of the crisis may be said to have begun after the elections of 1830, with the Duke of Wellington's declaration in the Lords that "the Legislature and the system of representation possessed the full and entire confidence of the country." Shortly after the delivery of that sparkling epigram, the duke resigned and Earl Grey came in, pledged to some measure of reform. The agitators could put in the forefront of their case the fact that in the three kingdoms some 140 peers controlled between them some 310 seats, returning

the members by the merest pretence of popular election. They could point to the fact that quite recently (in 1827 and 1828) modest attempts to deal with individual cases of gross corruption had been foiled by the Upper House, and that it was only with the utmost difficulty, and in the midst of repeated failures, that the Commons could be persuaded to do anything at all. They could refer with indignation to the humorous position of a hillock crowned by a ruined castle, and a plot of land in a country park, returning members, while Leeds, Sheffield, Manchester, and Birmingham returned none.

The answer was simple and direct: "It is part of the Constitution that it should be so. If we give seats to some big towns, what is to prevent other big towns demanding similar treatment?" As in the case of the slave trade, it was "vested interest" run mad.

On March 1, 1831, Lord John Russell introduced the first Reform Bill in the House of Commons. It was debated ardently and long, but its second reading was only carried by a majority of one, and in committee the Government were defeated. Amid scenes of wild excitement in both Houses, the Parliament was dissolved, and Grey emerged from the general election with a majority of 136. Fortified by this, the bill was reintroduced in June, passed its second reading by the full majority, and was carried in state up to the Lords, who, true to their principles, rejected it by a majority of forty-one on its second reading. A special appeal was made to the bishops—one of them voted for the bill. Then

followed those demonstrations of public opinion which, according to the new theory of the Lords' veto, were constitutionally necessary to ensure the passing of an Act. Riots broke out in various parts of the country, and bishops, if seen, were mobbed in the streets. This was unpardonable, of course, but no other form of persuasion was to hand. In December a third bill was introduced. On the second reading the majority had increased to 162.

The committee stage lasted till the middle of March 1832, when the bill was carried by a majority of 116. Violence had had its effect, and it passed on its second reading in the Lords by nine. An archbishop and four bishops had changed their minds. During the committee stage the Government refused to accept an amendment that the consideration of the disfranchising clauses should be postponed. Total stoppage of supplies was mentioned, but times had changed ; the Lords would not have been the worst sufferers. After much pressure, and an attempt to get a ministry formed by the Duke of Wellington and Peel, William IV consented to create peers. The threat was effective, and by 106 to 22 the bill sailed through stormy waters into harbour.

The details of this great reform belong more properly to the history of the Commons ; but in brief it took 143 seats from rotten boroughs or boroughs with less than 2000 inhabitants, created 43 new boroughs, 22 of which were to return two members each, extended the county franchise, set up a £10 householder qualification in the

boroughs, and abolished the privileges of corporations, which had produced the most glaring instances of unabashed traffic in seats. No attempt, however, was made to approximate to "one vote one value," which remains a problem to the present day. Similar changes were made in the same year in Scotland and Ireland, and the Irish members were increased from 100 to 105.

The prophecy of national ruin has not yet been fulfilled, though a respectable and worthy body of opinion has ever since soothed itself with the reflection that the country has perpetually been going to the dogs. But in fearing for themselves the Lords were right. The final release of the Commons from their domination entirely changed their position. Till now there had been no serious danger of their having to take into consideration the feelings of anybody below the rank of a forty-shilling freeholder or borough freeman, and control of these, though expensive, was ridiculously easy. Consequently the few quarrels with the Commons which had taken place since the Revolution were usually about privileges, and whoever won it was all pretty much the same to the House of Lords. In the words of Mr. Bagehot, they had been "a chamber of directors": a great commoner might govern the country but the Peers took good care that they were not likely to be troubled with substantial proposals of social or political reform to which they seriously objected. But now, robbed of their faithful Commons, they felt that the world was coming rapidly to an end. They had become "a House

of temporary rejectors and palpable alterers"; and slowly and reluctantly they were compelled to throw overboard all their dearest prejudices in face of the advancing tide of democracy. In 1832 a motion in the House of Lords had caused the resignation of the ministry; but this never occurred again. After that date, two or three times (notably in 1833, on a vote of censure carried by the Duke of Wellington in relation to Portugal; in 1839, on the carrying of a motion for a committee of inquiry in relation to Ireland; and in 1850, on a motion concerning the case of Don Pacifico) when the House of Lords censured the Government, there was talk of resignation; but a vote of confidence by the Lower House usually put matters right. In Mr. Bagehot's little book is set out the famous letter from the Duke of Wellington, written at the time of the repeal of the Corn Laws, which shows how they were driven to an appreciation of the new order of things. The duke points out, in words which have been the inspiration of leaders of the Lords on many subsequent occasions (the passing of the Trade Disputes Bill in 1906 will be freshest in the memory), that he has endeavoured to manage the House "upon the principles on which I conceive that the institution exists in the Constitution of the country, that of conservatism." He has objected to violent measures. He persuaded many to stay away on the last stages of the Reform Bill discussion. "*This course at the time gave great dissatisfaction to the party; notwithstanding that I believe it saved the existence of the House of Lords*

at the time and the Constitution of the country. Subsequently throughout the period from 1835 to 1841 I prevailed upon the House of Lords to depart from many principles and systems which they as well as I had adopted and voted on Irish titles, Irish corporations, and other measures, much to the vexation and annoyance of many. But I recollect one particular measure, the union of the provinces of Upper and Lower Canada, in the early stages of which I had spoken in opposition to the measure and had protested against it; and in the last stages of it I prevailed upon the House to agree to and pass it, in order to avoid the injury to the public interests of a dispute between the Houses upon a question of such importance. . . . Upon the important occasion and question now before the House (the Corn Laws) *I propose to endeavour to induce them to avoid to involve the country in the additional difficulties of a difference of opinion, possibly a dispute between the Houses, on a question in the decision of which it has been frequently asserted that their lordships had a personal interest; which assertion, however false as affecting each of them personally, could not be denied as affecting the proprietors of land in general.*"

Here was a dignified acceptance of a somewhat undignified position—a position nevertheless from which the House of Lords has never yet expressed any anxiety to be relieved. The chamber which had subdued kings by force of arms and led captive the advancing Commons by the power of the purse now found itself deposed from the position of driver of the engine to

that of the man who puts on the brake; and in revenge it proceeded to put on the brake on every possible occasion, only taking it off when the new driver found the deadlock so intolerable that there was some danger of his dismissing the brake-man altogether.

The value of the House as a "temporary rejector" is, and for long will be, a matter of dispute. There may be some who will maintain that the disabilities of the Jews were properly ended in 1858, whereas their removal in 1833 or 1834, or even 1857, would have been fraught with danger to the country's welfare. Possibly, though this is improbable, it may be urged that they never should have been removed at all. There may be some who can point to the delay from 1834 to 1871 in the complete admission of Nonconformists to the universities, from 1858 to 1868 in the abolition of compulsory Church rates, from 1873 to 1880 in the opening of graveyards to Nonconformists, as great instances of the political wisdom of the Peers. There may be some—they are probably few—who still approve of the resistance to the attempts to check bribery in 1832, to the bribery bills of 1834 and 1838, and to the Ballot Acts of 1870 and 1871, and still think that the ballot should be optional. There will hardly be many to defend the Lords' action in 1842 on the question of the labour of children in mines or the provisions for the education of pit-boys in the Mines Regulation Bill of 1860, or the passing of the Deceased Wife's Sister Act to oblige a bishop and a duke in 1835, or the

amendment of the Married Women's Property Bill of 1870, which caused delay in real reform till 1882; though there are many who have to thank them for the continuation of the aldermen system in municipalities and the rescue of justices of the peace from the consequences of popular election with which they were threatened in 1836. Their dealings with Ireland are still in the region of party debate—their refusal to carry out the recommendations of the Devon Commission in 1845 and 1853; their amendments to the bill of 1870, by which they refused compensation in cases of ejectment for non-payment of rent; their subsequent rejection of the Compensation for Disturbance Bill in 1880; their resistance to the Land Bill of 1881; their reluctant acceptance of the disestablishment of the Irish Church in 1869: and the return of a Conservative majority in 1895 and the present condition of Ireland are no doubt referred to with pride as proof conclusive that the Home Rule Bill of 1893 was no solution of a very thorny question. The great split in the Liberal party supplies the Lords with their most substantial ground of defence for the rejection of that bill. But only fourteen years have passed, and experience has shown that that is but a short time for the application of the brake. The cautious observer will wait till the question is settled before deciding whether the wisdom of the Lords in dealing with Ireland has or has not been on the same high plane as their wisdom in dealing with most other things that they have touched.

But in the mass of controversial matter which surrounds the action of the House of Lords in the nineteenth century there are two or three points which stand out as of constitutional as well as of political interest.

The Berkeley peerage case in 1861 settled a point of domestic interest to the House. It will be remembered that in early times there were interesting points of doubt in the question of baronies by tenure and baronies by writ; and in this year one Sir Maurice Berkeley raised a claim to an extinct barony of Berkeley as the holder of lands to which the barony had once been attached. His right to the land was based upon a will; the precedents of the time of Edward III and Henry VII which he quoted were settlements by deed with licence from the Crown, wills devising real estate not being then recognised by law. His claim in effect amounted to an assertion that a peerage could be granted in life or devised on death like land to any person the holder chose. A resolution of the House in 1640 had forbidden the surrender of a barony to the Crown; another in 1641 had forbidden the transfer of a barony at all; in a case in 1669 the judges had declared "that whatever pretence there may have been for presuming that there were originally baronies by tenure, yet that baronies by tenure had been discontinued many years and were not then in being and so not fit to be revived." The fact that he claimed by will was in itself fatal to Sir Maurice; but the decision finally put

an end to any suggestion that a peer could in effect create a peer.

Another question of rather more general interest was settled by a resolution of the House in 1868, which abolished the custom of voting by proxies; and there were three notable events which bring up to date the struggles between the Lords and the Commons and the Lords and the Crown. "Struggles" is technically accurate; but in fact the two struggles had coalesced into one, as parliamentary government had brought Crown and Commons together. One method of raising money had been taxation upon paper and upon the Press. Financially it was not very important; politically it was useful as suppressing criticism and the spread of education. The advertisement tax had gone in 1836, and the newspaper duty went in 1855. There remained the paper duty, which still rendered the penny newspaper impossible as a commercial enterprise. In 1860, Mr. Gladstone passed through the Commons a bill for its abolition. The Lords rejected the bill, and the Commons passed a resolution reaffirming their right of granting aids and supplies alone, which the Lords had alleged to be no bar to their refusing to allow a tax to be taken off. The argument was a glaring fallacy, but it sufficed until Mr. Gladstone in the following year (1861) combined the repeal of the paper duties with the general financial Act of the year; and the alternative being acceptance or rejection of the whole, the opposition of the House of Lords was over-

come. This was an instance of the exercise of the powers of the House of Commons.

The second instance was one of the operation of the powers of the Crown. In 1871, Mr. Cardwell was reorganising the army, and was faced with the fact that commissions in the army had, like seats in Parliament, been the subject of purchase and sale for the last hundred years. Two commissions had condemned the practice, but vested interest had again stood in the way. The Lords employed the formula customary in their attacks upon franchise bills, and by 155 to130 postponed the "purchase" clauses till the whole scheme of reorganisation should come before them. Thereupon, as purchase was only sanctioned by royal warrant without reference to Parliament at all, the Queen, on Mr. Gladstone's advice, promptly cancelled the royal warrant, and purchase came to an end. It was admittedly a strong measure, but the circumstances to which it is applicable are too few to make it a dangerous precedent; and if ever strong measures were necessary to counteract the wise and disinterested conservatism of the Lords, they were necessary here.

The third and last instance of the use by the Commons of their power over money bills occurred in 1897. The Voluntary Schools Bill of that year provided for an aid grant to voluntary schools, to be distributed by the Education Department as the department thought best for helping necessitous schools; and the Department was empowered by the Act to approve or dis-

approve of associations of schools, to withhold the grant from a school unreasonably refusing to join such association, and exempted voluntary schools from rates. The bill was sent up by a Conservative Government, and the Lord Chancellor, keeping a watchful eye upon the privileges of the Commons, objected to discussion of any amendment. Liberal peers protested, but if the proceeding is used in the future as a precedent the *rôles* are likely to be reversed.

There remain to be considered the changes which took place and the changes which have been proposed. The disappearance of the Irish bishops in 1869 has been already noted, the number of prelates then returning to two archbishops and twenty-four bishops, at which it always remains. This is not, of course, the full number of bishops in the country: only the two archbishops and the Bishops of London, Durham, and Winchester are always lords of Parliament; the rest take their seats in order of seniority as occasion occurs. There have been attempts to exclude the spiritual peers in 1834, 1836, and 1837, but they came to nothing.

Of the temporal peers one point to be noted during the reign of Queen Victoria was the great increase in their numbers. Between 1880 and 1887 alone sixty-five were created, thirty-eight in the two years 1885 to 1887, and their total number now is (including the Scotch, Irish, and life peers in the House) 571.

The great effort to change their character was made in 1858. Whatever may have been the doubts in the

time of Edward I, it had long been settled that the right to a summons was hereditary. The only exceptions were statutory. The sixteen Scotch peers were only admitted to sit and vote if elected, and then only for the Parliament for which they were elected; the twenty-eight Irish peers were elected for life. But in 1856 Sir James Parke was raised to the peerage as Baron Wensleydale, and his patent specified that the honour was to be for life. As to the right of the Crown to impose such a limitation there was no dispute. But in his patent was a clause entitling him to receive a writ of summons. This raised the question at once whether the Crown had any such right to alter the constitution of the House of Lords. There was no instance for the past four hundred years of a man being created a peer for life and sitting in the House; and supposed instances of an earlier date have been examined and found not to support the contention that such a thing is possible. The Lords, therefore, refused to receive Baron Wensleydale unless he were made a real lord; and the chance, for good or ill, of the House being able to point to a steady supply of life peers as an answer to the reproach that its members were there by accident had gone. Various attempts have been made to persuade them to accept life peers—by Lord Russell in 1869, by Lord Salisbury in 1888, and by Lord Rosebery in 1884 and 1888. By Lord Russell's bill twenty-eight were to be created; by Lord Salisbury's there were to be not more than five created each year (and

so that there should never be more than fifty at one time) from among the judges, rear-admirals, major-generals, ambassadors, governor-generals, and other persons equally likely to be in sympathy with the advanced opinion of the age; while Lord Rosebery, protesting against "a mere zoological collection of abstract celebrities," would have entirely reconstituted the House and made it a gathering of representatives of the peerage, the House of Commons, the colonies, the county councils, and the larger municipalities. None of these propositions, or of the propositions made about the same time to exclude unworthy peers, was taken too seriously, and the only life peers who sit in the Lords are the four Lords of Appeal, who are called up in accordance with the provisions of the Appellate Jurisdiction Act of 1876. To them are deputed the legal duties which the House has still retained as the final court of appeal. Technically the whole House may sit to hear appeals, but they are content to leave that side of the work to the experts.

As the Lords after the Reform Bill rapidly proceeded to identify themselves with one party in the State, it is not surprising to find the other party making proposals for the limitations of their powers. The schemes have been many and varied, ranging from reform of their constitution to total abolition; and they all have been subject to the initial difficulty that as it took riots and famine to induce the Lords to pass the Reform Bill and to abolish the Corn Laws, it is not easy to see

what will be required to induce them to abolish or reform themselves. But times and manners have become more gentle in seventy years, and it would probably be now recognised that the return of a large Liberal majority after the issue had been definitely before the country was an expression of opinion within the meaning of the words of the Earl of Derby in 1846. "It never has been the course of this House to resist a continued and deliberately expressed public opinion. Your lordships always have bowed, and always will bow, to the expression of such an opinion." Twice have resolutions found their way on to the records of the Commons. In 1894, on the motion of Mr. Labouchere, an amendment to the Queen's Speech was carried: "That the power now enjoyed by persons not elected to Parliament by the possessors of the parliamentary franchise to prevent bills being submitted to your Majesty for your royal approval shall cease; and we respectfully express the hope that if it be necessary your Majesty will, with and by the advice of your responsible ministers, use the power vested in your Majesty to secure the passing of this much-needed reform." This amendment being carried by two votes was not very terrifying to the Lords, and became less terrifying than ever after the elections of 1895. The methods suggested were the summoning of additional peers, which is possible, but not so easy as it used to be when the numbers of the Lords were smaller and parties more evenly divided; or alternatively the limiting of

the issue of writs, against which suggestion there is the probability that each hereditary peer would be able to establish by law his right to receive his summons. After this for ten years the House slept in comfort, or repelled at intervals with undiminishing courage the advances of the Deceased Wife's Sister Bill, till there came up in 1906 and 1907 for impartial consideration and amendment the bills whose fortune is too recent to need recounting now; and with Sir Henry Campbell-Bannerman's resolution of June 26, 1907, one more important chapter in the history of the House of Lords began:

> "That, in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the other House to alter or reject bills passed by this House should be so restricted by law as to secure that within the limits of a single Parliament the final decision of the Commons shall prevail."

The method proposed was, in case of disagreement between the two Houses—first, a small private conference of equal numbers from both Houses; then an interval of six months or so; the reintroduction and rapid passage of the bill; another conference; again the reintroduction and rapid passage of the bill in its latest form; a third conference; and finally the passing of the bill without the Lords' consent.

The scheme did not err on the side of revolution, and a hundred members of the Liberal and Labour parties voted for a "total abolition" amendment. The original resolution was carried by 432 to 147.

And the chapter which follows still remains to be written.

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